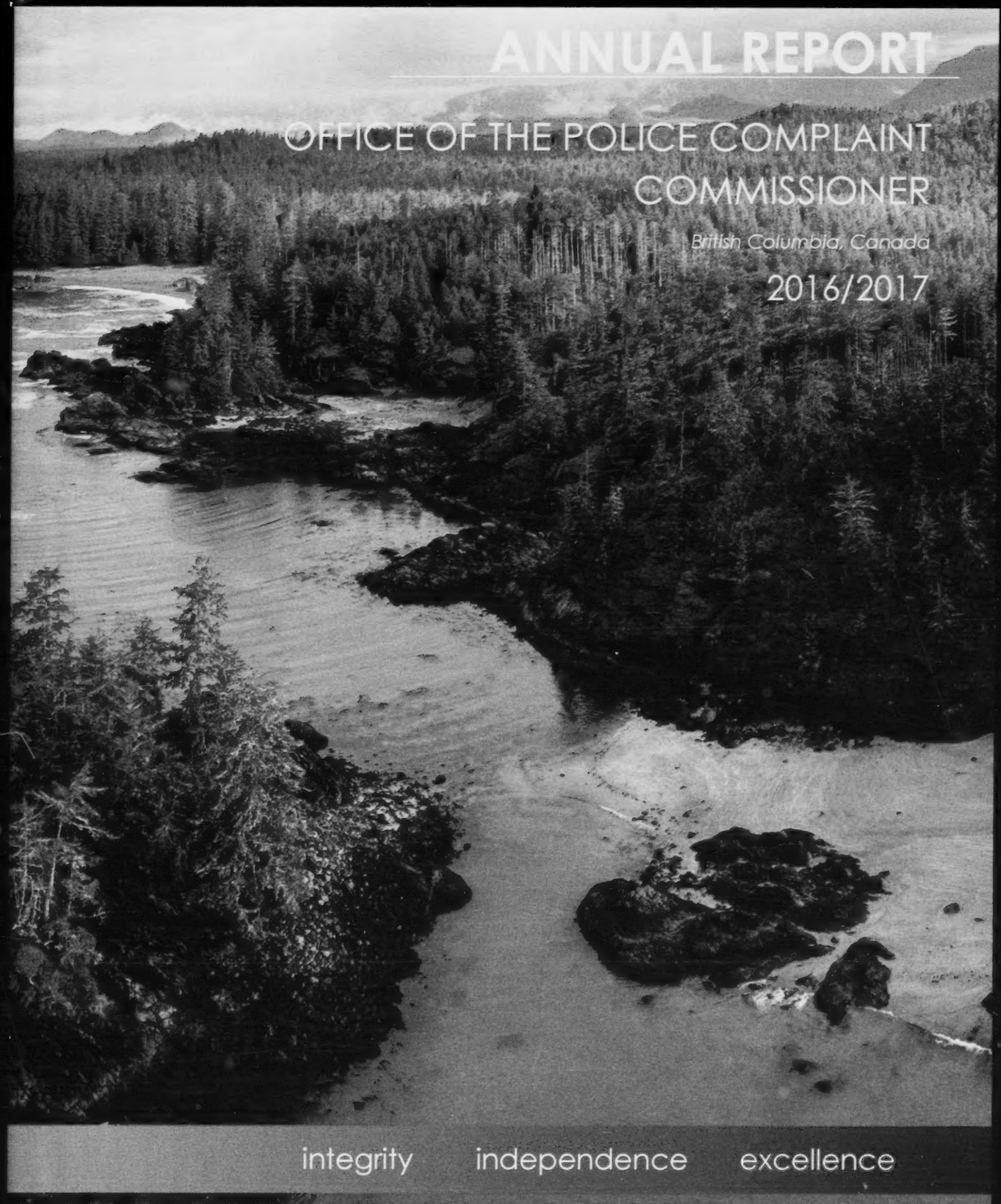

ANNUAL REPORT

OFFICE OF THE POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

2016/2017

integrity independence excellence

Office of the Police Complaint Commissioner (2017)

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Office of the
Police Complaint Commissioner

British Columbia, Canada

November 2017

The Honourable Darryl Plecas
Speaker of the Legislative Assembly
Parliament Buildings, Room 207
Victoria, BC V8V 1X4

Dear Mr. Speaker:

It is my honour to present to you and to the members of the Legislative Assembly the 2016/2017 Annual Report for the Office of the Police Complaint Commissioner.

This report has been prepared in accordance with section 51.1(1) of the *Police Act*, RSBC 1996, c.367.

Yours truly,

Stan T. Lowe
Police Complaint Commissioner

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Police Complaint Commissioner

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THE YEAR IN NUMBERS

FILES OPENED

1,205

445

REGISTERED COMPLAINTS RECEIVED

APPOINTED RETIRED JUDGE TO REVIEW MATTERS

8

426

REPORTABLE INJURY FILES WHERE A PERSON WAS INJURED BY POLICE AND RECEIVED TREAMENT

RECOMMENDATIONS TO POLICE BOARDS

4

NUMBER OF INVESTIGATIONS ORDERED

45

230

TOTAL NUMBER OF FILES FOR MISCONDUCT INVESTIGATION

ALLEGATIONS CONCLUDED

796

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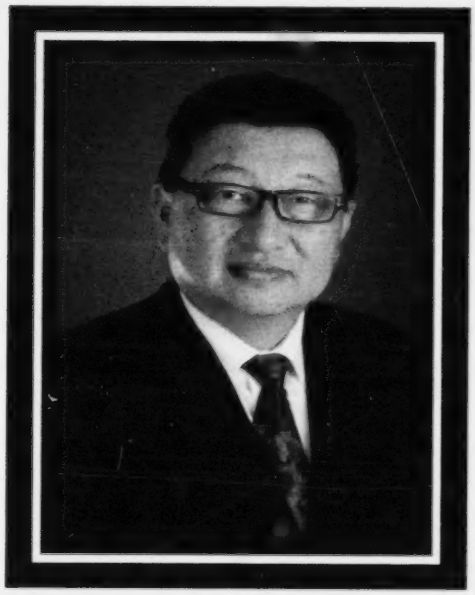
COMMISSIONER'S MESSAGE

In Canada, the public is served by a network of agencies engaged in civilian oversight of law enforcement. These Federal and Provincial organizations vary in their respective processes in terms of transparency and accountability, however, they do garner a level of confidence amongst the public at large that has avoided the unsettling unrest that exists between the public and policing in the United States. Canada is recognized as a leader amongst countries in the world in the realm of civilian oversight of law enforcement.

This past year has been an interesting time in police oversight in Canada, as well as in this province. Mr. Justice Michael Tulloch released his much anticipated *Independent Police Oversight Review* to the government of Ontario in March. His report included many innovative recommendations in which the government has endorsed and is preparing to implement, which will substantially transform the oversight landscape in Ontario and influence the oversight landscape nationally.



In preparation of his report, Mr. Justice Tulloch carefully examined the police oversight system in British Columbia, as our province has been viewed as a leader in the area of civilian oversight of law enforcement. In 2010, a unanimous Legislature introduced significant changes to the *Police Act* and the oversight process in British Columbia. In turn, our office has received strong support from the House, assisting with the implementation of the oversight process, and the exercise of our oversight powers in the public interest.

Our office intends to provide further recommendations to government for its' consideration for legislative change, based in part on the findings and recommendations of Mr. Justice Tulloch's report, in order to improve our current police oversight system. We look forward to maintaining our strong working relationship with Government, while maintaining the independence of our Office.

We have completed the implementation of a strategic re-visioning plan, which involved revisions to our Internal Business Practices, public outreach, and information management system. This re-visioning plan is directed towards improving the efficiency and effectiveness of our operations, in support of our goal of excellence in our work.

Finally, Alternative Dispute Resolution (ADR) remains as the legacy initiative for my term as Commissioner. This past year, our Office and the Vancouver Police Department (VPD) participated in a Complaint Resolution pilot project which has proven to be an overwhelming success. Almost 40% of admissible complaints involving the VPD were resolved through ADR, which places their department amongst the leaders nationally in the successful resolution of complaints. ADR enhances community policing by improving the individual relationships between members of the public and police officers, with positive impression on those who participate. The public who participated were highly satisfied with the ADR process and their outcomes.

I am indebted to our staff of dedicated and diligent public servants. These individuals constantly strive for excellence, courage and perseverance in their work.

Stan T. Lowe
Police Complaint Commissioner

ABOUT THE OPCC

Mandate

The Office of the Police Complaint Commissioner (OPCC) is a civilian, independent office of the Legislature which oversees and monitors complaints and investigations involving municipal police in British Columbia and is responsible for the administration of discipline and proceedings under the *Police Act*.

The OPCC performs a gatekeeping function by determining the admissibility of complaints received from the public, initiating investigations and, when appropriate, referring matters for adjudicative review. The OPCC ensures that investigations by police agencies under the *Police Act* are thorough and professional and are undertaken with impartiality and fairness to all parties involved.

The OPCC maintains records of all police complaints and *Police Act* investigations involving municipal police officers and the investigation outcomes. The office compiles statistical information and reports regularly to the public about these complaints and investigations. The Police Complaint Commissioner (the Commissioner) is responsible for advising, informing and assisting all parties involved in the complaint process; this includes complainants, police officers, Discipline Authorities, police boards and adjudicators appointed under the *Police Act*.

Mission

The Office of the Police Complaint Commissioner promotes accountable policing within our communities and enhances public confidence in law enforcement through impartial, transparent civilian oversight.

Vision

To engage in effective civilian oversight that provides accountability and builds public confidence in policing.

Guiding Principles

Integrity

We act fairly and honestly in our oversight of the complaint process involving municipal police in British Columbia while ensuring a principled and just approach in arriving at decisions.

Independence

As an independent office of the Legislature, we serve the public objectively, impartially and free from any improper influence or interference.

Excellence

We are committed to excellence in our work while promoting courage and perseverance in our staff. We recognize that it is outstanding and dedicated people, working as a team, who make our mission and values a reality.

Did you know?
The OPCC opened 1,205 files last year

SERVING THE PUBLIC INTEREST

Who We Are

The OPCC is an independent office of the Legislature. What this means is that we are independent of government and police. We are an organization staffed by a team of dedicated civilian employees with a range of backgrounds from policing, law, regulation and academia.

What We Do

The OPCC is the province's independent civilian oversight agency that provides an accessible way for the public to voice their concerns about the conduct of any municipal police officer or department. Our office is responsible for ensuring compliance with Part 11 – Misconduct, Complaints, Investigations, Discipline and Proceedings, of the *Police Act*.

Our office determines the admissibility of all complaints filed against municipal police officers and forwards the complaint to the respective police department for investigation. We also can independently order an investigation into an incident that comes to our attention. While investigations into police misconduct are completed by the police, our office adds a layer of accountability and transparency to the complaint process by ensuring that investigations into police misconduct are both thorough and competent. If there are areas of deficiency, our office can either recommend or direct further investigative steps or follow-up. Our office can also determine whether it is in the public interest to direct a complaint to be investigated by an external police department or whether the decision maker should be a Chief Constable or other high ranking member from an external police department. We review all police misconduct investigations and decisions. If we disagree with a finding of no misconduct, we can forward the matter for review by a retired judge.

In addition to the above mentioned roles, the OPCC can make recommendations to police boards for improvements to the manner in which they deliver their police services to the public in British Columbia, such as recommendations for policy creation or amendment. We can also make recommendations for improvements to the *Police Act*. We are committed to ensuring that the police complaint process in British Columbia continues to improve and meet the needs of both the public and policing community.

Who We Serve

We serve all British Columbians and all parties involved in the complaint process.

To learn more about the OPCC, please visit our website at www.opcc.bc.ca.

OUR WORK

Public Trust

The primary purpose of the OPCC is to build and maintain the public's confidence in the police complaints system in British Columbia. The office does this by providing independent and impartial civilian oversight of investigations into police misconduct.

Commissioner

The Police Complaint Commissioner is an independent Officer of the Legislature. He oversees the police complaint system and investigations into police misconduct and reports regularly to the public.

He establishes guidelines on how complaints are to be handled. He has the authority to appoint retired judges to Public Hearings and establishes procedures for mediation and Complaint Resolution.

Oversight

We actively monitor and oversee police misconduct investigations as they are investigated. Police departments are required to send their investigative materials to our office for review.

Legislation

The OPCC's work is guided by the BC *Police Act*. The Commissioner can make recommendations to government to improve the *Police Act* with respect to police oversight.

Intake Services

The Intake Coordinator, supported by the Executive Administrative Assistant, responds to complaints and inquiries received in any form. They can also connect complainants with one of our many support agencies to provide assistance during the complaint investigation process.

Research

The OPCC will be embarking on new research initiatives in the area of police oversight. We are facilitating a research project between the School of Criminology at Simon Fraser University and the Canadian Association of Civilian Oversight of Law Enforcement to begin a new and exciting oversight study in the area of Alternative Dispute Resolution.

Police Board Recommendations

The Commissioner can make recommendations to municipal police boards on how policing services are delivered to the public and how services and policies can be enhanced. Efforts are made to ensure that these recommendations are implemented within a reasonable timeframe.

Adjudication

When the Commissioner disagrees with a finding, he can appoint a retired judge to review the matter. Retired judges work at arms-length from the OPCC to ensure their decisions are made independently and without interference. These reviews can be a paper review of the matter or an in-person hearing where witnesses are called to testify.

Stakeholder Engagement

The OPCC has a broad range of stakeholders. We strive to keep them informed of our role and services. We recognize that our stakeholders have individual, diverse and sometimes conflicting needs. Our stakeholders include: complainants and their advocates; municipal police bodies; adjudicators; and government.

What guides the staff of the OPCC?

Integrity • Independence • Excellence

POLICE ACT REQUIREMENTS

The Police Complaint Commissioner is ***required*** by the *Police Act* to:

1. Establish guidelines to be followed with respect to the receiving and handling of registered complaints and questions or concerns.

2. Establish forms to be used for registered complaints, mandatory investigations and by members of the public who have questions or concerns.

3. Establish and maintain a record of each complaint and investigation, including all supporting documents.

4. Compile statistical information regarding complaint records, including:
   a. demographic information;
   b. number and frequency of complaints, types or classes of complaints and the outcomes or resolutions; and
   c. trends in relation to police complaints.

5. Report regularly to the public about complaints, complaint dispositions and the complaint process. Such reports must be published at least annually and be posted on a publicly accessible website.

Did you know?
You can find brochures and other resources on our website to learn more about the OPCC as well as to assist you with registering a complaint.
www.opcc.bc.ca

6. Develop and provide outreach programs and services to inform and educate the public on the police complaint process and the services provided by the OPCC, with special consideration and attention to addressing the particular informational needs of British Columbia's diverse communities.

7. Establish and make available to the public a list of support groups and neutral dispute resolution service providers and agencies that may assist complainants with informally resolving or mediating their complaints when appropriate.

8. Inform, advise and assist the public, complainants, police officers, discipline authorities, police boards and adjudicators with the complaint process.

9. Accept and consider comments from any interested party regarding the administration of the police complaint process.

10. Make recommendations for the improvement of the police complaint process in the Annual Report.

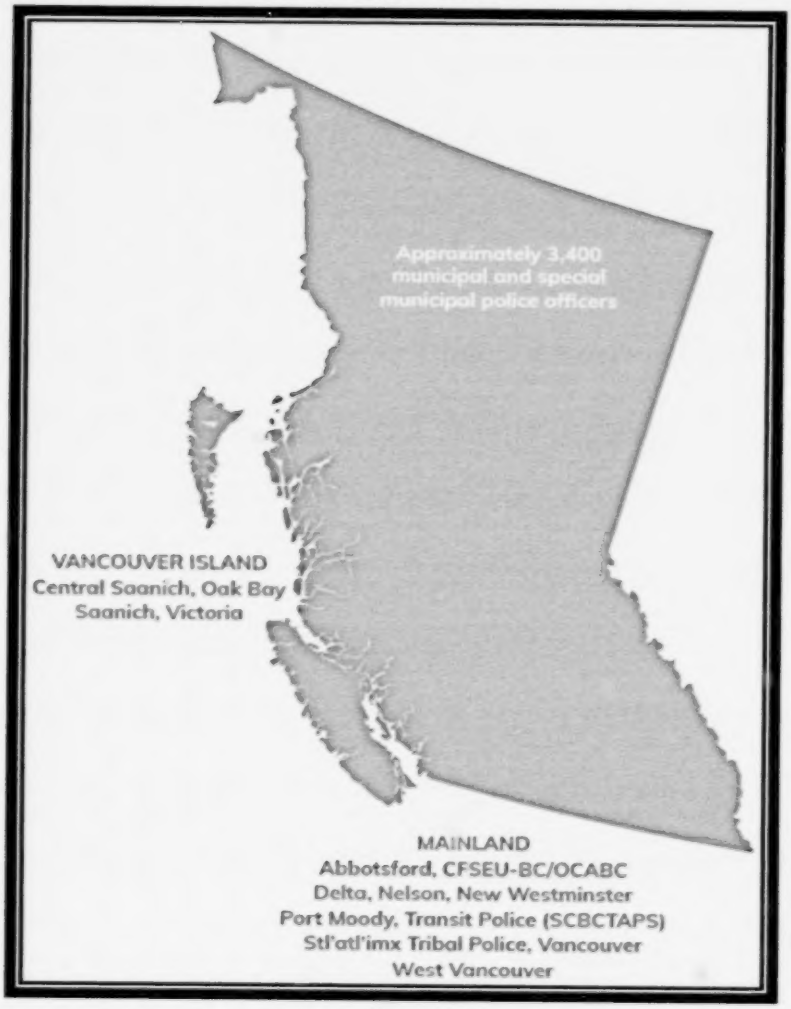
11. Establish procedures for mediation and guidelines for Complaint Resolutions of public trust complaints.

The Police Complaint Commissioner ***may*** also do the following:

- Report on any matter related to the functions of the Commissioner.
- Engage in or commission research on any matter relating to the police complaint process.
- Make recommendations to police boards about policies or procedures on factors that gave rise to a complaint.
- Make recommendations to the Director of Police Services or the Solicitor General that a review or audit be undertaken to assist police in developing training or other programs designed to prevent the recurrence of problems revealed by the complaint process.
- Make recommendations to the Director of Police Services to exercise one or more of their legislatively-appointed functions in relation to a service or policy complaint.
- Make recommendations to the Solicitor General for a public inquiry under the *Public Inquiry Act* if there are reasonable grounds to believe:
    1. The issues supporting an inquiry are so serious or widespread that a public inquiry is necessary in the public interest; or
    2. An investigation conducted under Part 11 of the *Police Act*, even if followed by a Public Hearing or Review on the Record, would be too limited in scope, and powers granted under the *Public Inquiry Act* are needed.
- Consult with and advise contemporaries in other Canadian jurisdictions or with the Royal Canadian Mounted Police.

JURISDICTION

The Office of the Police Complaint Commissioner oversees the handling of complaints involving the following municipal police departments:



Mainland

Abbotsford

Delta

Nelson

New Westminster

Port Moody

South Coast BC Transportation Authority Police Service

Stl'atl'imx Tribal Police

Vancouver

West Vancouver

Combined Forces Special Enforcement Unit of British Columbia (Members of the Organized Crime Agency of BC)

Vancouver Island

Central Saanich

Oak Bay

Saanich

Victoria

On August 1, 2016, jurisdiction for complaints involving **Special Municipal Constables** were transferred to the OPCC.

The Commissioner does not have jurisdiction over the handling of complaints involving members of the Royal Canadian Mounted Police (RCMP). The *Royal Canadian Mounted Police Act* provides a separate process for complaints regarding a member of the RCMP. Complainants are referred to the Civilian Review and Complaints Commission for the RCMP:

Civilian Review and Complaints Commission for the RCMP
National Intake Office
PO Box 1722, Station B
Ottawa, ON K1P 0B3
Toll-Free: 1-800-665-6878
Website: www.crcc-ccetp.gc.ca

Did you know?
The OPCC is able to receive complaints in person, by mail, email, fax, or phone, or via our website at www.opcc.bc.ca.

OTHER AGENCIES

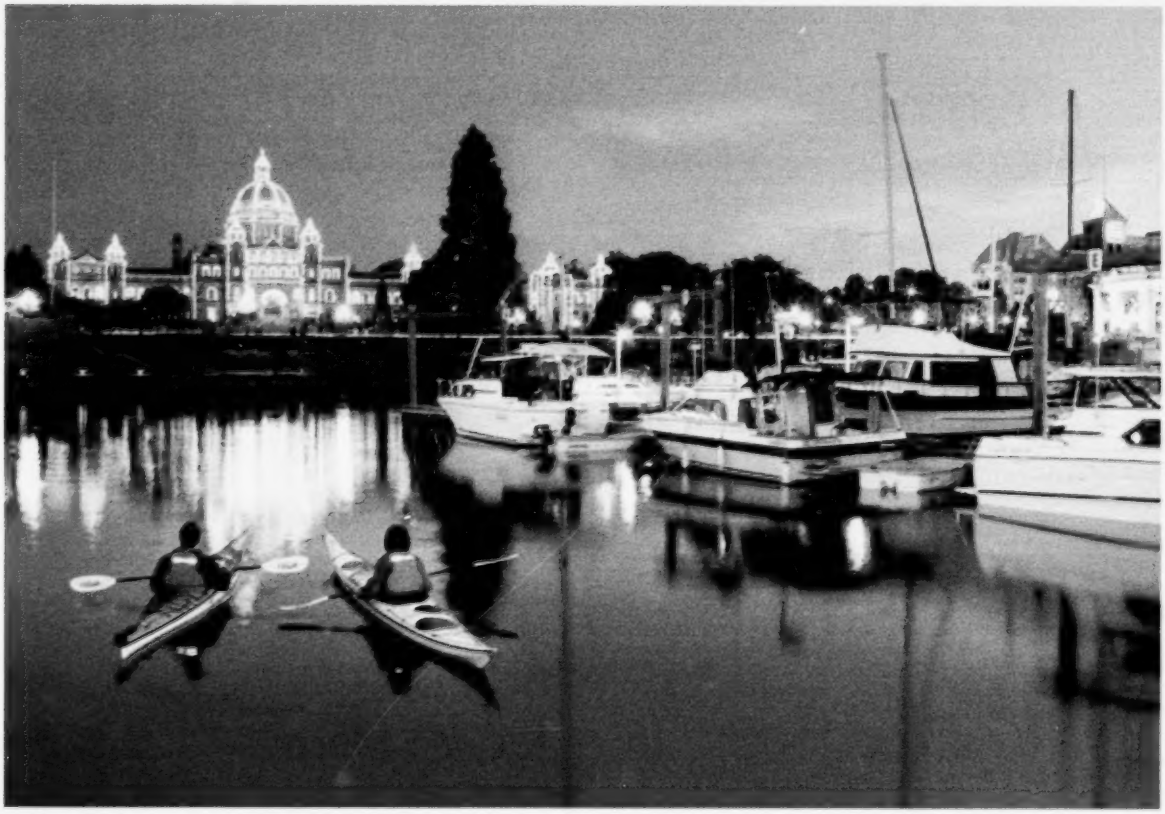
There are two other agencies in British Columbia responsible for either investigating police-involved incidents, or providing civilian oversight of police complaint investigations.

Independent Investigations Office (IIO)

The IIO is a civilian investigative body responsible for investigating officer-involved incidents that result in death or serious harm in order to determine whether or not an officer may have committed an offence. The IIO has jurisdiction over both municipal police agencies and the RCMP in British Columbia, as well as officers appointed as Special Constables when they are exercising their authority as Special Constables. For more information about the IIO, please visit www.iiobc.ca.

Civilian Review and Complaints Commission for the RCMP (CRCC)

The CRCC is an independent agency created to ensure that complaints about the conduct of RCMP members are examined fairly and impartially. The CRCC conducts reviews when complainants are not satisfied with the RCMP's handling of their complaint. The CRCC also conducts investigations, holds hearings, reports findings and makes recommendations for changes to national policing policies and practices. For more information about the CRCC, please visit www.crcc-ccetp.gc.ca.



THE CIVILIAN COMPONENT

The work of the OPCC is unique in comparison to that of other independent offices of the Legislature. It provides oversight over municipal police officers who hold significant powers over citizens in the enforcement of the law created both federally and provincially.

OPCC analysts must possess a comprehensive understanding of the *Police Act* and associated processes. They must also possess an expertise in the professional aspects of police operations. This policing expertise includes policing operations, policy, training and the conduct of all aspects of police investigations.

Recent commissions of inquiry and review involving police incidents and oversight headed by the Honourable William H. Davies, Q.C., the Honourable Thomas R. Braidwood, Q.C., and Ontario Ombudsman André Marin, have echoed a common theme: *the importance of civilian participation in the oversight and investigation of police-involved incidents.*

In terms of staffing, the OPCC will continue to rely upon the valuable contribution from former police officers to address its needs for expertise and knowledge in the field of policing. An internal training process is in place to ensure the development of this specialized knowledge and expertise amongst OPCC civilian staff members.

The OPCC's goal is to maintain the optimal balance between promoting the civilian nature of the office and ensuring its staff have the necessary skill sets in place to maintain excellence in their oversight work.

Approximately two-thirds of the staff engaged in decision-making roles have backgrounds outside of policing. Many are the product of an intensive in-house training program which began several years ago.

While civilian participation in oversight is an important goal for the OPCC, the Commissioner has set the office's operational focus as *organizational loyalty*, in our performance of the OPCC's important service to the public, regardless of our staff's collective backgrounds.

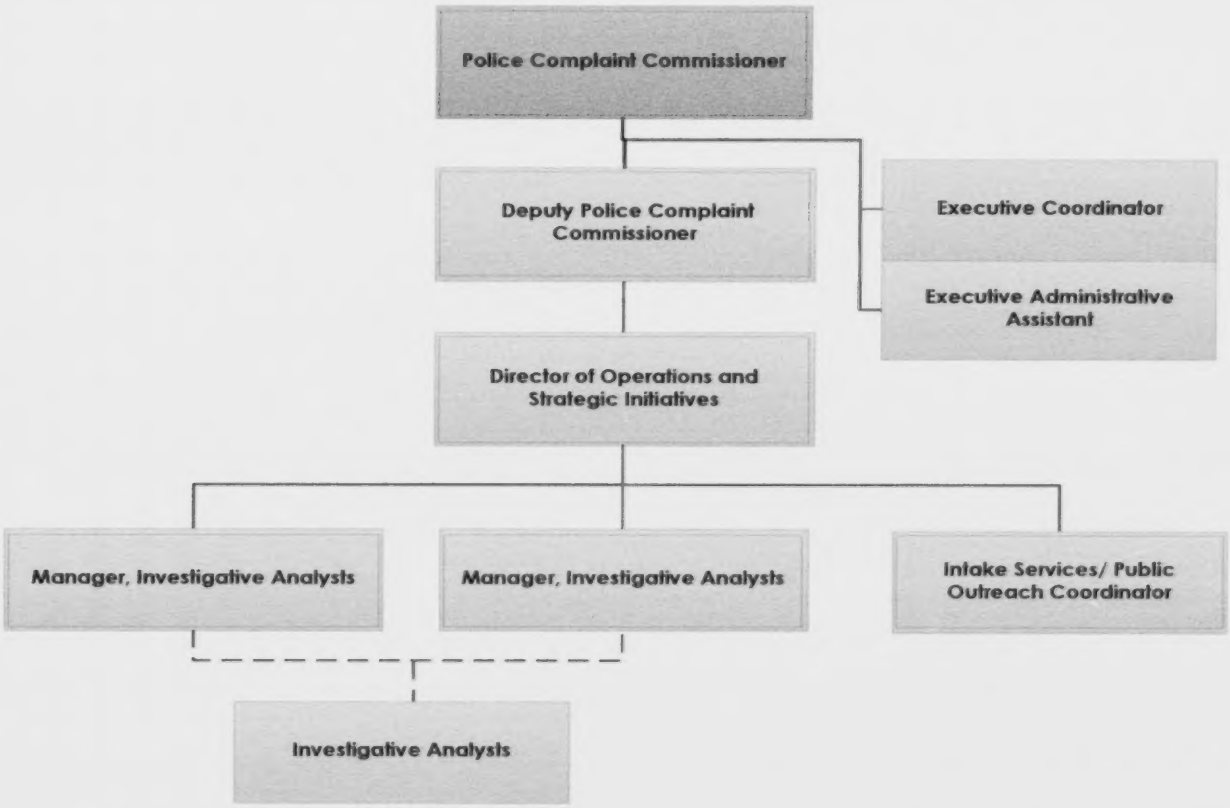
Our Operations

At the heart of the OPCC is a dedicated group of people from both civilian and police backgrounds. To meet our objectives, our team includes staff with diverse backgrounds, including training in the law, academia and policing.

We are proud of our paperless office and are privileged to work in a LEED-certified building which provides great facilities for our green commuters.

Did you know?
We gain insight from engaging with those who have an interest in our work to inform and improve the service we deliver.

OPCC STRUCTURE



OUTREACH & EDUCATION

Outreach and education are important tools that provide the OPCC with the opportunity to ensure that both members of the public and police understand the importance of civilian oversight of police complaints and how the complaint process works.

Using Outreach to Increase Access to the Police Complaint Process

The Office of the Police Complaint Commissioner's outreach initiatives focus on creating pathways to the police complaint process for members of the community who might not otherwise have access to our services. The OPCC formed partnerships with community-based organizations that are the most likely to be a point of contact for individuals seeking support, assistance and/or searching for information about the police complaint process. By engaging in collaborative partnerships, we are able to improve accessibility to the police complaint process for those who may be hesitant or unable to directly access a police department or our office to file a complaint.

An important part of the police complaint process is resolving complaints using **Alternative Dispute Resolution** (see page 20 for a full description). During the ADR process, a community support person may assist a complainant who may face challenges such as cultural, economic, age, language or physical barriers. Many community-based organizations recognize that there are those in our society who do not have a support system in place and have generously offered to assist those who fall within their mandate. A list of these support groups is available from the OPCC.

The OPCC would also like to recognize the following agencies that assist our office by disseminating information about the police complaint process, as well as by providing support to those who need it during the police complaint process:

Abbotsford Community Services
Atira Women's Resource Society
Battered Women's Support Services
BC Coalition of People with Disabilities
Carnegie Community Centre
Coast Mental Health
Covenant House
Cool Aid Society
Cridge Centre for the Family
Deltassist Family & Community Services
Downtown Eastside Women's Centre
Elizabeth Fry Society
First United Church
Frank Paul Society
Fraserside Community Services Society
Jewish Family Service Agency
John Howard Society of BC
Justice For Girls
Kettle Friendship Society
Knowledgeable Aboriginal Youth Assn
Men's Trauma Centre
Métis Nation British Columbia
MOSAIC
Motivation, Power & Achievement Society
Native Courtworker and Counselling Association of BC
Our Place Society
PACE Society
Pacific Community Resources Society
PEERS Victoria
Progressive Intercultural Community Services
Salvation Army
Shiloh Housing Society
Sixth Avenue United Church
South Vancouver Neighbourhood House
S.U.C.C.E.S.S.
UBC First Nations Legal Clinic
Urban Native Youth Association
Vancouver Aboriginal Friendship Centre Society
Vancouver Rape Relief
Victoria Disability Resource Centre
Victoria Immigrant and Refugee Centre Society
WISH
Women Against Violence Against Women Rape Crisis Centre
YWCA Crabtree Corner
YWCA Legal Educato

Outreach and Educational Activities

This year, the OPCC delivered a number of educational presentations to academic institutions, both on Vancouver Island and the Mainland, to provide information on the complaint process, *Police Act* legislation and the role of civilian oversight in British Columbia. Each semester we meet with the University of Victoria Law Centre students to discuss the complaint process and how their organization could provide support to those who wish to file a police complaint. We also deliver an annual presentation to the interns enrolled in the BC Legislative Internship Program.

This past year, we attended the Justice Institute of British Columbia's Bachelor of Law Enforcement Studies class to discuss the role of oversight in this province with prospective police officers. We also met with students enrolled in the Masters of Dispute Resolution program at the University of Victoria to discuss the importance of dispute resolution in resolving police complaints.

The Police Complaint Commissioner meets regularly with the provincial government to discuss the oversight landscape in British Columbia, as well as with police department executives and police unions to promote mutual understanding and information on best practices.

This past year, our office met with the Stl'atl'imx Tribal Police Service to provide *Police Act* training. Stl'atl'imx is a Designated Policing Unit pursuant to the *Police Act* and operates under a Self-Administered Policing Agreement (SAPA) between the province, Canada, and ten Stl'atl'imx Nation Communities. Our office also met with their police board to discuss the complaint process, and their responsibilities under the *Police Act*. This discussion provided our office with an opportunity to listen and hear the challenges faced by the community and police in this region.

As a member of the Canadian Association for the Civilian Oversight of Law Enforcement (CACOLE), the Police Complaint Commissioner consults with and advises persons who, in other jurisdictions of Canada or within the Royal Canadian Mounted Police, hold the same or similar position. This past year, the Police Complaint Commissioner visited the police oversight agencies in Ontario and Quebec to learn more about their Dispute Resolution programs and ways to improve the use of Alternative Dispute Resolution in BC. The Commissioner also met with the Honourable Justice Michael Tulloch of Ontario to discuss his review of Ontario's three civilian police oversight bodies.

In addition to providing educational presentations, the Police Complaint Commissioner continues to be part of the Advisory Committee on Provincial Policing Standards and the Provincial Committee on Cultural Diversity and Policing.

The OPCC will continue to create and maintain relationships with organizations, representatives and policing agencies to strengthen public and police confidence in our office and our role in providing impartial civilian oversight of complaints involving municipal police.

HIGHLIGHTS

The OPCC is focused on achieving greater effectiveness and efficiency in its work. The key features of our work over the past 12 months include:

Development of a Strategic Alternative Dispute Resolution (ADR) Plan

Alternative Dispute Resolution (ADR) has been identified as a legacy initiative by the Commissioner. Considering the importance of this initiative, we have developed and initiated a plan that we hope will increase the number of successful resolutions, while also improving on the quality and timeliness of Complaint Resolutions. The greatest impact we can have on this program is in our communication with complainants. The strategies identified will improve communication from our office to complainants about the benefits of ADR. This will be done by taking a more proactive approach in promoting and encouraging ADR, by having regular contact with complainants and investigators, and meeting with departments to collaboratively develop strategies for what works. As part of this plan, a pilot project with the Vancouver Police Department was implemented at the beginning of 2017. Early results from this project show promise and we hope to roll this program out to all departments later this year.

Rebranding of the OPCC

An essential means for communicating our office's mandate to the public is through our website. After reviewing the language used in our mandate, guiding principles and the creation of a mission and vision statement, the OPCC engaged in a rebranding process to update and modernize the 'look' of the organization. This process included a complete overhaul of the OPCC website to help the public easily navigate and learn about the complaint process, as well as file their complaints online. We have added new content about the complaint process and have made it easier to find and search for decisions regarding adjudicative reviews. We also unveiled our new logo which symbolizes balance and fairness. Check out our new website at www.opcc.bc.ca.

Implementation of a new Case Management System

This year, the OPCC transitioned to a new case management system. This improved system will allow for greater control in the type of information we collect and report out to the public. In addition, managers are better equipped to review and provide feedback and guidance to analysts relating to their oversight.

In-house Investigative Analyst Training and Mentorship Program

This past year we hired additional Investigative Analysts, all from civilian, non-policing backgrounds. These analysts are currently participating in the revised Investigative Analyst Training Program, as modifications and additions were made to this program last year. These modules include the development of lesson plans and relevant resources in the area of police powers, case law and the *Police Act*. These new analysts will also go through our mentorship program which pairs new analysts with more experienced staff who can provide direct guidance and advice on assigned oversight files.

Continued Improvements Made to Internal Business Practices for OPCC Staff and Information Bulletins to Police Departments

In an effort to maintain consistency across departments, Information Bulletins are sent out regularly to ensure police departments are employing a consistent approach in their responsibilities, and to provide clarity in the application of certain sections of the *Police Act*. A recent review of internal discipline practices revealed that not all internal discipline matters were being dealt with in a consistent manner by departments. A revised Information Bulletin was disseminated to all departments and police boards, providing guidance on the difference between public trust and internal discipline matters.

In addition, the Commissioner issued a Guideline to all municipal police departments regarding their statutory requirement to notify this office of incidents of death and serious harm. The purpose of the Guideline is to provide clarity to departments in what matters require reporting to this Office, criteria to be applied in determining whether an injury constitutes serious harm and provides guidance in matters where police officers render assistance to members of the public (e.g., drug overdose).

Internal Audits

In preparation of a more substantive audit of our work, we have hired a former manager to review our case files and quality of our oversight in order to proactively manage any areas of our work that require improvement.

THE COMPLAINT PROCESS

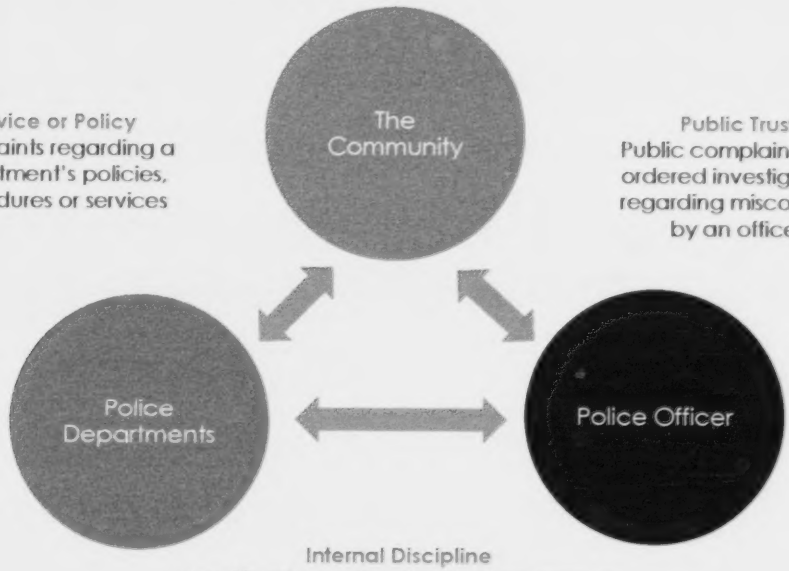
What is a *Police Act* Complaint?

There are **three types** of complaints that are handled under Part 11 of the *Police Act*:

Public Trust complaints are about a police officer's conduct or actions that affect a citizen personally or that he or she has witnessed; the Police Complaint Commission can also independently order an investigation in the absence of a complaint.

Service or Policy complaints are those regarding the quality of a police department's service to the community or regarding their operating policies.

Internal Discipline complaints involve performance management issues or employer/employee concerns that do not affect or involve members of the public.


Service or Policy
Complaints regarding a department's policies, procedures or services
The Community
Public Trust
Public complaints and ordered investigations regarding misconduct by an officer
Police Departments
Police Officer
Internal Discipline
An officer's conduct that is of concern to his or her employer, but does not involve or affect the public

The Public Trust process may be initiated by three different routes:

Ordered Investigations
May be at the request of the department or by the Commissioner's own initiative
Mandatory External Investigations
As a result of serious injury or death while in the care or custody of the police
Registered Complaints
Formal complaints submitted by members of the public

An **ordered investigation** is initiated when information of potential misconduct is received but no complaint has been submitted by a member of the public. Between April 1, 2016, and March 31, 2017, there were 45 ordered investigations: 26 at the request of the police department and 19 on the Commissioner's initiative as a result of information received.

The *Police Act* stipulates that all incidents that result in serious injury or death to individuals in the custody or care of the police, or as a result of operations of a department, must be reported to the OPCC and the Commissioner must order an investigation be conducted by an external agency. Between April 1, 2016, and March 31, 2017, there were 7 **mandatory external investigations** ordered.

By far, the most common method of initiating the complaint process is through complaints received from members of the public. A citizen may submit a complaint regarding an incident in which they were directly involved or witnessed, or a third party may submit a complaint. Between April 1, 2016, and March 31, 2017, there were 445 **registered complaints** received.

What does misconduct mean?

The *Police Act* sets out categories of officer conduct that, if proven, would constitute misconduct. The Act defines misconduct as follows:

Conduct that constitutes a public trust offence which is an offence under the Criminal Code or of any provincial enactment, a conviction in respect of which does or is likely to:

1. ***render an officer unfit to perform his or her duties as a police officer; or***
2. ***discredit the reputation of the department with which the officer is employed.***

According to the Act, any conduct that is considered to be harassment, coercion or intimidation of anyone making a complaint, or hindering, delaying, obstructing or interfering with a *Police Act* investigation, is conduct that constitutes misconduct.

Types of Police Misconduct

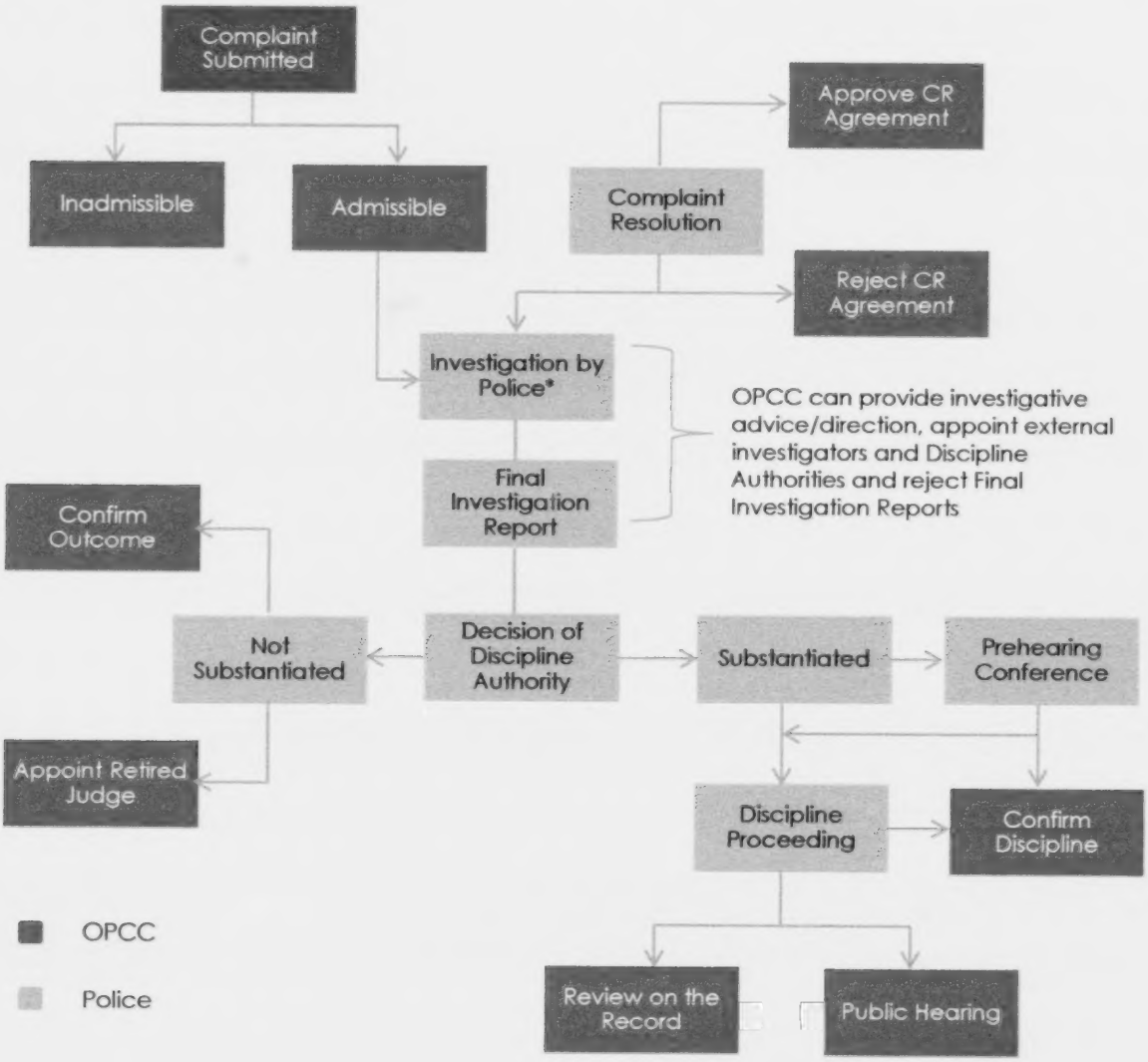
Once a complaint file is deemed admissible or an investigation is initiated, allegations of misconduct are identified against individual officers. The *Police Act* identifies and describes 13 disciplinary breaches of public trust:

1. *Abuse of Authority*
2. *Accessory to Misconduct*
3. *Corrupt Practice*
4. *Damage to Police Property*
5. *Damage to Property of Others*
6. *Deceit*
7. *Discourtesy*
8. *Discreditable Conduct*
9. *Improper Disclosure of Information*
10. *Improper Off-Duty Conduct*
11. *Improper Use or Care of Firearm*
12. *Misuse of Intoxicants*
13. *Neglect of Duty*

Did you know?
The Police Complaint Commissioner forwarded 403 public trust allegations to police departments for investigation last year.

COMPLAINT FLOWCHART

This chart is an overview of the complaint process under the *Police Act*. The OPCC provides a gatekeeping role by conducting admissibility assessments of complaints and can appoint retired judges for the purposes of adjudicative review. This office also provides independent civilian oversight over misconduct investigations conducted by police.



*The OPCC can also order an investigation and municipal police departments can request that the OPCC initiate an investigation.

ADMISSIBILITY REVIEWS

Since the revisions to the *Police Act* in 2010, all registered complaints must first be reviewed by the OPCC to determine whether they are admissible under Division 3 (Public Trust) of the *Police Act*.

In order for a complaint to be deemed admissible, it must:

1. Contain an allegation of conduct that, if substantiated, would constitute misconduct as defined by the *Police Act*;
2. Be filed within one year of the occurrence, except when the Commissioner considers that there are good reasons for extending the time limit and that an extension is not contrary to the public interest; and
3. Not be frivolous or vexatious.
    - Frivolous:
        - is not based on an evidentiary foundation and has an insufficient level of plausibility in order to be made admissible
        - is lacking in any arguable basis or merit in either law or fact
        - is trivial, lacks seriousness or is futile
    - Vexatious:
        - the complaint was brought for an improper or oblique purpose
        - complainant has persistently submitted complaints involving an issue that has already been determined
        - complainant has raised substantively the same issues as contained in previous complaints

Once a complaint has been deemed admissible, it is forwarded to the Professional Standards Section of the originating police department for investigation.

Did you know?
We received 445 registered complaints last year.

ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR) has been identified as a legacy initiative by the Commissioner. Resolving suitable complaints through communication, understanding and reconciliation results in a more meaningful resolution for the participants. ADR allows for repair and improvement of public confidence in police, one relationship at a time.

Depending on the particular circumstances, it may be determined that a complaint is suitable for Complaint Resolution. A complaint can only be resolved if both the complainant and the officer agree to engage in the process and, ultimately, agree to the proposed resolution in writing. All agreements are reviewed by the OPCC to ensure the resolution is meaningful and appropriate based on the circumstances. Agreements reached are confidential, final and binding once confirmed by the Commissioner.

A complaint may also be suitable for resolution through the assistance of an independent professional mediator. Before a file can proceed to mediation, the Commissioner must first approve the mediation attempt to ensure the circumstances are appropriate for mediation. Mediations are completely confidential and agreements reached are final and binding as long as all the issues are resolved in accordance with the guidelines established for mediation.

Our experience has shown that there are a high number of complaints which are better suited to Complaint Resolution or mediation, as opposed to an investigation, which could take up to six months to reach a conclusion. By directly participating in the resolution and finding solutions to a conflict, the majority of complainants and officers come away from the process confirming that the experience resulted in a meaningful level of satisfaction. A successful Complaint Resolution provides the opportunity to gain a greater understanding of the situation which gave rise to the complaint and both parties achieve a broader perspective on the issue. As a result, a greater degree of learning and relationship-building can be gained as compared to the outcome of an investigation. The OPCC encourages complainants and police at the front end to take full advantage of these options while ensuring the public interest is met.

During the review of all Complaint Resolution agreements, complainants are contacted to ensure they are satisfied with the process. The responses from complainants have been positive and constructive. Feedback from complainants is very valuable to us as it assists us in improving our Alternative Dispute Resolution program.

Training

In partnership with certified mediators, the OPCC has developed a Complaint Resolution training program specifically designed for Professional Standards Investigators and frontline officers. Both members of municipal police departments and the RCMP have attended these training sessions in the past. The participant feedback has been positive and we will continue to revise and improve the course content as necessary to meet the specific demands of resolving police complaints.

This last year, we facilitated a training session with the Vancouver Police Department as part of the new pilot project for ADR. This session was led by experts in the field of dispute resolution of police complaints. These police officers had firsthand experience in resolving police complaints and provided valuable tips and strategies to other Professional Standards Investigators to successfully resolve complaints.

The OPCC will continue to promote and encourage the use of ADR by providing assistance to Professional Standards Investigators wherever possible and guidance to complainants through the process. A number of support agencies are also available to complainants (for a full list, please visit www.opcc.bc.ca). Our office is able to facilitate the use of a community agency to provide support to complainants as they go through the Complaint Resolution process.

Since the implementation of new legislation in April 2010, the number of allegations resolved through this process has grown substantially. The OPCC actively reviews each complaint during the admissibility assessment to determine if it is suitable for a resolution attempt by the police department. Between April 1, 2016, and March 31, 2017, the OPCC encouraged a resolution attempt in 113 complaints, or 53% of complaints reviewed. The OPCC reviewed and approved Complaint Resolution agreements relating to 120 allegations of misconduct that were contained in 63 complaints. The number of allegations resolved through ADR is consistently higher than under the previous legislation where only 7.8% of allegations were resolved informally.

While we have seen an increase in the number of complaints successfully resolved, our goal is to lead the country in the Alternative Dispute Resolution of police complaints. Despite our efforts in promoting and encouraging ADR, it is our view that we require further changes to the *Police Act* to ensure that an ADR process is at least attempted for those allegations deemed appropriate.

QUESTIONS AND CONCERNS

When a member of the public raises and reports a question or concern about a member of the municipal police department but does not file a formal complaint, police departments are required to record those questions or concerns and forward them to the OPCC for reviewing purposes. This differs from the ADR process, as a complaint must be filed in order for a formalized ADR process to be attempted.

Last year, the OPCC received and reviewed 218 questions or concerns reported by the public. An analyst from the OPCC will contact the person who brought forward the question or concern to determine their level of satisfaction with the department's response.

In over half of the cases, the person reported that they were very satisfied with the department's response and felt their concerns were resolved and did not want to take any further action. In cases where our office was unable to reach the complainant, the OPCC reviewed the action taken by the department and determined that the department took adequate and reasonable steps to address that person's questions or concerns.

DISCONTINUATIONS

Police Act investigations may be discontinued if, after further information is obtained, it is established that:

1. further investigation is neither necessary nor reasonably practicable;
2. the complaint is frivolous or vexatious; or
3. the complaint was made knowing it was false or misleading.

CORRECTIVE AND DISCIPLINARY MEASURES

The *Police Act* sets out the range of corrective and/or disciplinary measures to be imposed if misconduct has been proven against the officer. The measures must include one or more of the following:

- Advice as to future conduct
- Verbal reprimand
- Written reprimand
- Participate in program/activity
- Undertake counselling or treatment
- Undertake training or re-training
- Work under close supervision
- Transfer/reassignment
- Suspension without pay (up to 30 days)
- Reduction in rank
- Dismissal

Measures that seek to correct and educate the member take precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

INVESTIGATIONS

Investigations into allegations are conducted by a Professional Standards Investigator within a police department. Investigations into complaints are to be completed within six months and both the complainant and subject officer receive regular progress reports on the investigation. An OPCC investigative analyst is assigned to the file and contemporaneously monitors the investigation to ensure it is conducted professionally and addresses the concerns raised.

Once the investigation is complete, the investigator submits a Final Investigation Report to the Discipline Authority of the police department for a decision and to the OPCC for review. A Discipline Authority is the Chief Constable of the department, or a senior officer designated by the Chief Constable. The OPCC will review the Final Investigation Report to ensure the investigation is thorough and can reject the report and direct further investigation.

Within 10 business days of receipt of the report, the Discipline Authority must provide his or her decision to the complainant, the subject officer and to the OPCC. The decision must set out whether the evidence appears to substantiate the allegation of misconduct and, if so, advise as to the range of proposed discipline or corrective measures.

A prehearing conference may be held allowing the officer the opportunity to admit the misconduct and accept the proposed discipline or corrective measures. If no agreement is reached, or a prehearing conference is not held, the matter then proceeds to a discipline proceeding before the Discipline Authority.

The complainant may request a review of the file if they disagree with the Discipline Authority's decision not to substantiate an allegation, or if they disagree with the results of a discipline proceeding. An officer may also request a review if he or she disagrees with the outcome of a discipline proceeding. Also, if the penalty imposed is dismissal or a reduction in rank, the officer is entitled to a Public Hearing or, if the Commissioner deems it more appropriate, a Review on the Record.

ADJUDICATIVE REVIEWS

The OPCC reviews all investigations and decisions to ensure the integrity of the process and to confirm that decisions are impartial and fair. If the Commissioner disagrees with a decision, he has three avenues of adjudicative review to choose from, depending on the unique circumstances of the matter. The Commissioner may:

Appoint a new Discipline Authority (s.117)

Appoint a retired judge to review the Final Investigation Report and arrive at a decision as to whether the allegation appears to be substantiated by the evidence. If the finding is that the allegation appears to be substantiated, the retired judge then becomes the Discipline Authority for the matter. If the retired judge's finding is that the allegation is not substantiated, the matter is final and conclusive.

Last year, the Commissioner disagreed with the Discipline Authority's decision that there was no misconduct and appointed a retired judge in **three** cases. In two of the cases, the retired judge determined that it appeared the member committed misconduct and disciplinary/corrective measures were imposed. The remaining case is currently under a judicial review and no decision has been made.

Arrange a Review on the Record (s.141)

Arrange for a Review on the Record following a discipline proceeding. A retired judge is appointed to conduct a "paper review" of the entire matter, deliver a decision and, if substantiated, the corrective and/or disciplinary measures to be imposed. A retired judge's decision following a Review on the Record is final and conclusive and is not open to question or review in any court.

Last year, the Commissioner arranged a Review on the Record in **four** cases. In two of the cases, the member was facing dismissal and, therefore, was entitled to a Public Hearing or a Review on the Record. In the other two cases, the Commissioner disagreed with the disciplinary/corrective measures imposed by the Discipline Authority.

Order a Public Hearing (s.143)

Order a Public Hearing following a discipline proceeding. A retired judge is appointed to sit as the adjudicator and review the evidence, hear sworn testimony and arrive at a decision. These hearings are open to the public and an adjudicator's decision is final and conclusive and may only be appealed on an issue of law. The Commissioner arranged for a Public Hearing in **one** case last year.

RECOMMENDATIONS TO POLICE BOARDS

(SUMMARIES)

Fiscal Year 2016/2017

Vancouver Police Department — Registered Complaint 2015-11435
Collection of Identifying Information

After being ejected from a concert at BC Place by a Vancouver police officer, a member of the public filed a complaint against the Vancouver Police Department (VPD). The Vancouver police officer informed the complainant that the reason for his ejection was his history of drug use. According to the evidence reviewed, the officer was acting as an agent of BC Place pursuant to a private agreement. Pursuant to section 177(4)(c) of the *Police Act*, the Police Complaint Commissioner recommended that the Vancouver Police Board examine and reconsider any policies or procedures that may have been a factor in the collection of identifying information.

The Police Complaint Commissioner advised that the collection of identifying information by police is an ongoing concern. As such, the Police Complaint Commissioner was hopeful that the Vancouver Police Board would adopt a comprehensive policy with broad application to a variety of policing circumstances that strikes a reasonable balance between the rights of citizens and the goals of policing. The Police Complaint Commissioner was of the view that the only other viable alternative was to seek assistance from the legislature, as exemplified in Ontario, and currently under consideration in Alberta.

At the time this report was generated this issue remained outstanding.

Vancouver Police Department — Ordered Investigation 2015-11354
Unofficial Banked Time

The OPCC received information that a member of the Vancouver Police Department may have been fraudulently claiming time by arranging pay for themselves while not actually working. The Final Investigation Report identified 18 instances where there were discrepancies between payroll documents and the respondent officer's attendance at work. It became apparent through a review of the Final Investigation Report that there was a lack of documentation in regard to some of the days that the respondent officer had taken off using their unofficial banked time, which made it difficult to discern precise details as to what sort of leave they were using when away from work.

Having reviewed the available evidence, it was apparent to the OPCC that the lack of a clear, formalized policy with respect to how overtime was granted, tracked and remunerated by the VPD may have been a factor in the conduct that was the subject of this investigation. The Police Complaint Commissioner recommended that the Vancouver Police Board examine and reconsider any policies or procedures relating to lieu time and overtime.

The police board did not elect to follow the recommendations made by the Police Complaint Commissioner and determined that a change to policy was not required.

Vancouver Police Department Ordered Investigation 2015-11158
Improper Use or Care of Firearms

An investigation was made into the unintentional shooting of an off duty police officer who was attending a gun range to practice with a self-purchased, non-approved, concealed carry holster. While in the act of re-holstering, the police officer unintentionally shot himself in the upper right leg. The Police Complaint Commissioner agreed with the Discipline Authority that there was a lack of policy governing plainclothes training and equipment. The investigation also determined that the police officer had not taken the VPD training course on plainclothes/concealed carry holsters, as this course was not mandatory by policy.

The Commissioner recommend that the Police Board examine its training and policies with respect to providing greater clarity for its members to ensure that all members assigned to plainclothes duties are issued approved and tested equipment and are appropriately trained on their use.

The Police Board accepted the Commissioner's recommendations with regards to the acquisition and issue of plain clothes holsters, as well as the annual qualification and proficiency requirements which members using plain clothes holsters must meet.

Vancouver Police Department Registered Complaint 2015-10981
Working with a diverse public

After being arrested for smoking in a "no-smoking" area, a legally blind member of the public filed a complaint regarding his experience with a Vancouver officer. The officer did not believe that the male was legally blind and based his belief, in part, on false stereotypes of blind people. The OPCC found that there is an educational gap when Vancouver police come in contact with a diverse public, including individuals with physical disabilities. The incident escalated as it was alleged that the male would not properly identify himself. This male was eventually punched, kicked and pepper sprayed by police to effect the arrest of Obstruct Police. The citizen was then handcuffed, had his legs "hobbled," was placed into a police wagon and driven to jail.

These stereotypes remain an ongoing concern. The demonstrated lack of understanding surrounding blindness during this incident was identified as an educational gap. The Police Complaint Commissioner was of the view that the Vancouver Police Department could benefit from clear and objective policy and training in the area of understanding and interacting with a diverse public, including persons with disabilities.

The police board requested the Vancouver Police Department conduct an investigation into the Police Complaint Commissioner's recommendations and produce a report for the board's consideration. The police board reviewed the report and advised that as a result of the Police Complaint Commissioner's recommendations, the VPD provided additional information to front-line personnel which defines the term 'legal blindness,' the role of the Canadian National Institute for the Blind (CNIB), and suggested methods to assist interactions with people suffering sight loss and educated officers about the identity card used by the CNIB. The Police Complaint Commissioner was satisfied with the action taken by the VPD in response to the recommendations. *For more details regarding the recommendations made by the Police Complaint Commissioner, please see Appendix on page 84.*

CASE STUDIES

The following complaint summaries are intended to provide samples of the variety of complaints which were concluded between April 1, 2016, and March 31, 2017. All substantiated complaints resulting in corrective or disciplinary measures are recorded on the officer's Service Record of Discipline.

Question or Concern – OPCC 2017-13049

The complainant was concerned about the length of time it took for emergency responders to attend her call for service. The complainant had called to report a serious motor vehicle accident that had occurred outside her residence. The complainant reported that a vehicle had hit a power pole before becoming airborne, causing it to hit a fence and snap two trees before coming to a rest. The complainant felt the slow response time could have had a serious impact had someone in the vehicle sustained life threatening injuries. The complainant wanted the response time reviewed.

A police officer with the involved police department contacted the complainant who confirmed that she wished to proceed as a question or concern and did not want to file a complaint at that time.

The police officer met with the complainant and reviewed the data associated to her 9-1-1 call. The data showed that the complainant's call for service had been received at 0407 hours and a police officer was dispatched at 0408 hours. The police officer arrived on scene six minutes later. A second officer arrived on scene within 12 minutes.

After reviewing the data in detail, the police officer offered to obtain audio recordings for the complainant's review. The complainant declined, advising that she believed the information she had been provided; it had just felt longer to her at the time.

The OPCC reviewed all of the relevant material and determined that this was appropriately processed as a question or concern.

Question or Concern - OPCC 2017-13033

The complainant provided a breath sample on an Approved Screening Device (ASD), which registered a fail. The complainant was advised of his right to a second ASD test which he accepted. The complainant again registered a fail. As a result, the complainant was issued a 90 day Immediate Roadside Prohibition (IRP) and a 30 day vehicle impoundment pursuant to section 215 of the *Motor Vehicle Act*. The complainant contacted the involved police department to question why he received such a harsh penalty for his first drinking and driving offence.

The police officer who handled the call explained that the penalties for failing a breath test were legislated by law. The complainant was satisfied with this information.

The OPCC reviewed all of the relevant material and determined that this was appropriately processed as a question or concern.

Registered Complaint – 2017-13003
Inadmissible - No Misconduct Identified

The complainant reported that while she was out of town, a police officer attended her residence and spoke with her friend who was house sitting at the time. Upon being informed the complainant was out of the country, the police officer informed the friend that the complainant's father had passed away.

The complainant was concerned with how the police officer handled a next of kin death notification.

The involved police department had been contacted by an outside agency to make the notification. The OPCC reviewed the department's policy relating to next of kin notifications and noted that there was no section that addressed notification to non-family members in special circumstances. According to the reviewed policy, notifications should only be made over the telephone as a last resort. In this case, as the complainant was out of the country it may have been difficult. In balancing the expediency of informing the complainant by involving a third party, the police officer chose to make the notification.

While it was unfortunate that the complainant could not have received the notification directly, in light of all the circumstances, including the complainant being out of the country, for the member to make the notification in this way would not amount to an allegation that, if substantiated, would constitute misconduct.

The OPCC determined this complaint to be inadmissible.

Registered Complaint – 2016-12473
Admissible – Discontinued - Vexatious

A police officer telephoned the complainant and informed him that his truck was going to be towed because the licence plate displayed in the back window of the truck was from the complainant's other vehicle. The police officer further advised that two sets of truck licence plates had been removed from inside his vehicle. The complainant believed the search of his truck to be unlawful and the towing of his vehicle to be unfair.

The OPCC determined that the allegations in relation to the seizure of the car licence plate and the towing of the vehicle were inadmissible as they were authorized by law given the circumstances. Further, police have a common-law duty to protect property and this would include searching a vehicle that they are going to tow.

However, part of the complaint was determined to be admissible and was forwarded to the department for investigation with the following potential misconduct identified:

1. *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act*. Specifically, seizing the truck licence plates from inside the vehicle without good and sufficient cause.

2. *Neglect of Duty* pursuant to section 77(3)(m)(i) of the *Police Act*. Specifically, failing to account for the seizure and disposal of the licence plates taken from the truck.

An investigation was initiated and a duty statement was obtained from the respondent officer. The respondent officer believed the seized licence plates to be the property of ICBC, as per section 12(1) of the *Motor Vehicle Act* (MVA). The respondent officer further indicated that the licence plates were seized to prevent the continuation of an offence. The complainant had been found to be utilizing licence plates not assigned to his vehicle on two separate occasions.

The *Police Act* investigator noted that while section 3.09 of the MVA regulations state that the plates can be retained by the person to whom they are issued, the section is ambiguous when related to section 12(1) of the MVA. The *Police Act* investigator felt that due to the ambiguous legislation the complainant could be reimbursed for the licence plates.

The complainant agreed to accept a cheque for $54 to compensate him for the loss of the licence plates. The complainant indicated that he would withdraw his complaint following receipt of the cheque. When no withdrawal was received, the complainant was contacted and he stated he would only sign a withdrawal form if he received $320 for what he termed an "illegal tow."

The OPCC determined that the complaint should be discontinued on the basis that it was vexatious. It was apparent that the complainant was attempting to obtain further payment with respect to an inadmissible allegation which demonstrated that he was not concerned about the conduct of the respondent officer, but rather had an oblique motive in submitting his complaint to the OPCC.

Further, with respect to the seized licence plates, a review of the General Occurrence Report revealed that the seized licence plates had been entered into exhibits and turned over to ICBC.

Accordingly, having regard to all the circumstances, including information obtained after this matter was deemed admissible, the OPCC directed that the investigation into this matter be discontinued pursuant to sections 109(1)(a) and 109(1)(b)(i) of the *Police Act*.

Registered Complaint – 2016-11473
Admissible – Withdrawn – Satisfied

The complainant reported that on the night in question she had attempted to enter a nightclub. The doorman refused her entry claiming that she was banned. The complainant tried to step over the rope barrier to see the reason for her being banned and was physically guided away by the doorman. The doorman then approached two police officers, who in turn approached the complainant. The complainant reported that the two police officers escorted her to a police van without explanation and she was then transported to jail. Once released from jail, the complainant was informed that the reason for her detention was "refusal to leave premises." The complainant did not believe this to be true as she had walked away and was on her way home when police approached her. The complainant was also issued a ticket for being intoxicated in a public place.

The complaint was determined to be admissible and forwarded for investigation with the following potential misconduct identified:

1. *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act*. Specifically, that the complainant was taken to jail even though she had done nothing illegal.
2. *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act*. Specifically, that the complainant was not informed why she had been detained.

An investigation was initiated and during the investigation the complainant formally withdrew her *Police Act* complaint.

If a complainant elects to withdraw his/her complaint, the OPCC must accept the withdrawal with the caveat that the Police Complaint Commissioner may order an investigation under section 93 of the *Police Act* or continue to proceed with an ongoing investigation into the matter if the Police Complaint Commissioner deems it to be in the public interest [see section 94 of the *Police Act*].

It is the practice of the OPCC to contact complainants to ensure that they were not pressured or coerced into withdrawing their complaint and to ascertain the reason for the withdrawal.

The complainant advised that when she attended her violation ticket hearing, she had the opportunity to speak with one of the police officers. After a brief discussion, the police officer informed the complainant, "We both learned something." This was important to the complainant.

The complainant further advised that the *Police Act* investigator had provided her with the opportunity to review the video from the night in question. It became clear to the complainant that her recollection of the incident was different than what the video depicted.

The complainant appreciated the transparency of the police complaint process and the professionalism displayed by the *Police Act* investigators and the OPCC.

The OPCC reviewed all of the investigative materials gathered to date and the OPCC was satisfied that it was neither necessary nor required in the public interest that the investigation continue. Accordingly, the withdrawal was accepted and the file was closed.

Registered Complaint – 2015-10939
Admissible – Unsubstantiated – Policy Review

The complainant reported that a police officer ejected him from a restaurant without "good reason" and told him that if he returned he would face arrest for trespassing. The complainant reported that he had a clean record and could not understand why he had been ejected.

The complaint was determined to be admissible and forwarded on for investigation with the following potential misconduct identified:

1. *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act*. Specifically, that a police officer ejected the complainant from a restaurant without sufficient cause.

An investigation was initiated and, at its conclusion, the Discipline Authority determined that the respondent officer's actions were consistent with the department's Inadmissible Person Program (IPP) training and in accordance with his/her authority to enforce the BC *Liquor Control and Licensing Act* (*LCLA*) and an officer's common law duty to protect life.

The Discipline Authority concluded that the allegation was unsubstantiated for the following reason:

"Having assessed the evidence and applied an objectively reasonable standard to the conduct of the respondent officer, and having taken into consideration that the identified concerns of the IP

Program are not the fault of the respondent officer, the respondent officer was conducting himself/herself in a manner consistent with his/her training of the IP Program."

However, the department's Inadmissible Person Program was reviewed as a result of the investigation into this complaint and the Discipline Authority noted the following concerns:

- Reliance on the *BC Trespass Act* as authority to eject a person when that person has not had clear notice that he/she is not permitted to enter.
- The *Trespass Act* does not provide specific authority to ask for government-issued identification to determine whether a person meets the ejection criteria. The police department's IPP training appeared to rely only on the *Trespass Act* and was broad in scope.
- The IPP does not provide clear guidance for officers with respect to the definitions of 'Who is Inadmissible.' For example, 'associate' is not defined, which leaves the interpretation up to the police officer.
- The IPP Agreement, as written at the time, authorized police to remove unwanted patrons prior to any incident occurring, removing any case by case discretion that may be considered by the management of the establishment.
- There was no department policy in place at the time with respect to the IPP.

The Discipline Authority advised the OPCC that the department's IP Program was under review and recommended that, upon completion of that review, clear policy be drafted and training be provided to all of the department's police officers.

The complainant advised the OPCC he was pleased to know that the police department was taking steps to prevent a similar situation from happening in the future.

Based on a review of the available evidence, the OPCC was satisfied that the Discipline Authority appropriately determined that the allegation of *Abuse of Authority* to be unsubstantiated. However, the OPCC arrived at this conclusion for different reasons.

The BC LCLA does not contain provisions that create a statutory obligation for persons to provide government-issued identification to peace officers in the context of a bar check as conducted in this matter. Section 34(1) of the LCLA, the section cited by the respondent officer as providing authority to demand government-issued identification from the complainant, is an offence section. That section indicates that a minor who purchases or consumes liquor on a licensed establishment, commits an offence.

When the *Police Act* investigator asked the respondent officer to outline his/her grounds to believe the complainant was committing an offence pursuant to that section, the respondent officer stated he/she had dealt with "countless people who appear to be older than they are" and that identification is the "only way to confirm age to properly ensure no offence is being committed." The respondent officer was unable to provide any objectively discernible details with respect to the complainant or his companions in support of a reasonable suspicion to believe they were committing an offence.

When the *Police Act* investigator asked why the respondent officer conducted queries of the complainant and his companions after they had demonstrated they were not minors, the respondent officer noted that they were trying to confirm that the identification was not fake/fraudulent and that

their training clearly stated that they are to query all parties. The OPCC had concerns about the lawfulness of conducting database queries in these circumstances, absent reasonable suspicion to believe that lawfully obtained identification is fraudulent.

Despite an arguable case that the respondent officer did not have the authority to demand identification from the complainant, or to conduct database queries, it was the OPCC's view that their conduct was consistent with the IPP training materials and the direction received from their supervisors regarding the IPP and the use of the LCLA. The respondent officer was dispatched as part of a special unit. Part of their assigned duties was to conduct bar checks and eject persons who met the criteria in the IPP. Although the respondent officer's conduct approached the threshold of misconduct, their actions were ostensibly undertaken in good faith, based on their training and the accepted practices of the police department at the time. The OPCC was not convinced that the conduct exhibited the degree of moral blameworthiness necessary to constitute misconduct pursuant to the *Police Act*.

The OPCC agreed with the concerns expressed by the Discipline Authority regarding the department's Inadmissible Patron Program and that the department would benefit from the development of clear policy and training to guide officers conducting bar checks. The OPCC noted that the department was working on revising the Inadmissible Patron Program, including obtaining legal advice, to ensure that officers could lawfully continue the valuable work of the Program. Upon obtaining that legal advice, the department issued a directive to all management and supervisors providing direction for lawfully conducting the Inadmissible Patron Program. The department intended to continue reviewing related policies in consultation with other agencies and to update training materials in line with the legal opinion obtained. Based on this information, the Police Complaint Commissioner did not make recommendations to the police board pursuant to section 177(4)(c) of the *Police Act*.

Registered Complaint – 2012-7201
Admissible – Substantiated – Discipline

The complainant reported that two police officers arrested him for causing a disturbance without good and sufficient cause. The complainant further reported that the two officers used unnecessary force on his person to effect the arrest, including deploying pepper spray.

The complaint was determined to be admissible and forwarded on for investigation with the following potential misconduct identified:

1. *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act*. Specifically, unlawful arrest.
2. *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act*. Specifically, excessive force.

During the course of the investigation, a third allegation was added when the *Police Act* investigator noted inconsistencies between what the two respondent officers wrote in their Report to Crown Counsel and what was depicted in the video of the incident.

3. *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*. Specifically, the two respondent members knowingly made false or misleading statements in the police report.

An external police department was requested to conduct a *Criminal Code* investigation into the incident and the *Police Act* investigation was suspended pursuant to section 179(4) of the *Police Act* to avoid prejudicing the criminal proceedings. The two respondent officers were subsequently found guilty of assault contrary to section 266 of the *Criminal Code* and each received a conditional discharge, a four month probation order and were required to complete 25 hours of community work.

At the conclusion of the criminal proceedings, the *Police Act* suspension was lifted. The OPCC was subsequently informed that the complainant had registered a civil claim against the two respondent officers. As a result, the Police Complaint Commissioner deemed it in the public interest that the matter be investigated by an external police force pursuant to section 92(1) of the *Police Act* and that an external Discipline Authority be appointed pursuant to section 135(1) of the *Police Act*.

The external *Police Act* investigator completed the investigation and submitted a Final Investigation Report to the external Discipline Authority. In the report, the external *Police Act* investigator identified the following allegations of misconduct:

1. *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act*. Specifically, unlawful arrest.
2. *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act*. Specifically, excessive force.
3. *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*. Specifically, making a false or misleading entry in an official document or record.
4. *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act*. Specifically, that the two officers' notes did not comply with department policy.

Pursuant to section 112 of the *Police Act*, the external Discipline Authority determined that based on the evidence contained in the Final Investigation Report, allegations 1, 2, and 4 appeared to be substantiated against both respondent officers. However, the external Discipline Authority determined that allegation 3 for *Deceit* did not appear to be substantiated. In his reasons for his decision, the external Discipline Authority noted that this allegation had been considered during the criminal proceedings and the judge found that Crown Counsel had failed to prove beyond a reasonable doubt that evidence was fabricated, or that it was done with the intention of misleading. The external Discipline Authority determined that based on the comments of the criminal trial judge, and even when considering the differing burdens of proof required to convict under a criminal process, or substantiate under a civil burden of proof, there was insufficiently clear, cogent, and convincing evidence to establish that *Deceit* had been proven on a balance of probabilities by either respondent officer.

The OPCC reviewed all of the investigative materials and issued a Conclusion of Proceedings with respect to the *Deceit* allegation advising there was not a reasonable basis to believe the decision was incorrect.

Pursuant to section 124 of the *Police Act*, the external Discipline Authority convened a discipline proceeding for both respondent officers in relation to the substantiated allegations.

At the conclusion of the discipline proceeding, the external Discipline Authority issued a Disciplinary Disposition Record pursuant to section 128 of the *Police Act*. The decision included his findings, with

reasons, for each allegation. After considering the aggravating and mitigating factors, he proposed the following disciplinary or corrective measures in relation to the allegations he considered proven.

1. *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act*.
   One (1) day suspension for each respondent officer
2. *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act*.
   Two (2) day suspension for each respondent officer. Both respondent officers were also required to work under close supervision for a minimum of 500 hours.
4. *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act*.
   Advice to future conduct for one respondent officer.

The suspensions were to be served consecutively.

Pursuant to section 133(5) of the *Police Act*, if either of the respondent officers or the complainant were aggrieved by the findings of the external Discipline Authority, any or all of the parties could have made a written request to the Police Complaint Commissioner to order a Public Hearing or a Review on the Record.

Although no requests were received, to promote accountability in the complaint process, all findings and determinations at a discipline proceeding are reviewed by the OPCC, regardless of whether a request has been made.

Based on a review of the available evidence, the OPCC was satisfied that the allegation of *Neglect of Duty* against one of the respondent officers had not been proven based on the reasoning provided. The policy in effect at the time of the incident did not contain a requirement that officers use notebooks with numbered pages. Therefore, the respondent officer's notebook was not contrary to policy and, therefore, did not amount to a *Neglect of Duty*.

The OPCC determined that there were insufficient grounds to arrange a Public Hearing or a Review on the Record in the circumstances.

Our file with respect to this matter was concluded upon receipt of confirmation that, in accordance with the *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to by, the respondent officers had been completed, and that their service record of discipline had been updated.

Of note, the external *Police Act* investigator made the following recommendation in his Final Investigation Report, which the OPCC supported:

The external investigator would consider best practices in instances where recommended charges of "Assault PO" are being investigated, as it was in this instance, that the officers who are reported to be victims should not be the ones that complete/finalize the investigation. The investigation in its entirety should be assumed by another investigator, which did not take place in this instance. This would have provided an independent lens early in the investigation.

Registered Complaint – 2015-10713
Unsubstantiated – Policy Change

The misconduct portion of this file was concluded in the previous fiscal year, however, the Police Complaint Commissioner made recommendations to the department's police board pursuant to section 177(4)(c) of the *Police Act*. The OPCC received the police board's response to the recommendations this fiscal year.

As background, during an investigation regarding a sexual assault, a recorded interview of the victim was lost in transit between the department and another police agency. As a result, the victim had to be re-interviewed and highly sensitive information was lost. The respondent officer advised that the police department did not have a policy relating to the handling of sensitive material in terms of the delivery of the information.

The Commissioner recommended to the police board that the department should have a clear policy relating to the collection, storage, transmission and delivery of personal information.

The police board subsequently advised the Police Complaint Commissioner that in consultation with the department's Information and Privacy Unit, the Information and Communications Technology Section and the Forensic Video Unit, a new policy was created to replace the existing policy and address technological advances and legislative considerations. The new policy addresses:

- Handling video evidence from both internal and external sources, with regards to retrieving, copying, maintaining continuity, storage, forensic processing and securing information;
- Forensic processing of video;
- Using a secure file transfer system to send and receive encrypted video files;
- Transcription of video interviews.

The police board advised that the new policy was in line with *Freedom of Information and Protection of Privacy Act* (FOIPPA) requirements for a public body to protect private and sensitive information of clients and balanced investigative and operational policing requirements.

The Police Complaint Commissioner commended the police board and police department for their initiative in conducting a review of their business practices and producing policy and procedures which reflected current legislation, technological advances and that guided police officers in the collection, preservation and secure transfer of sensitive information including digital video evidence.

Ordered Investigation – Requested by Department – 2016-12014
Substantiated – Discipline

A police officer disclosed to their supervisor that, while off duty, they were the subject of a traffic stop at an impaired driving roadblock. The police officer provided a breath sample which registered a fail on the first Approved Screening Device (ASD). The police officer provided a second breath sample on a second ASD which again registered a fail. The police officer was issued a 90 day Immediate Roadside Prohibition (IRP) and a suspension from driving for 90 days pursuant to section 215 of the *Motor Vehicle Act*. The police department requested an Order for Investigation pursuant to section 93(1) of the *Police Act*. An Order for Investigation was issued with the following potential misconduct identified:

1. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*. Specifically, that while off duty, a police officer operated a motor vehicle while impaired in contravention of the *Motor Vehicle Act*.

An investigation was initiated and, based on the Final Investigation Report, the Discipline Authority determined that the allegation of *Discreditable Conduct* had been proven. Pursuant to section 120 of the *Police Act*, when a Discipline Authority determines that an allegation has been substantiated and requires the taking of disciplinary or corrective measures, the Discipline Authority may offer the respondent officer a prehearing conference to determine whether the respondent officer is prepared to admit misconduct and, if so, what disciplinary or corrective measures the respondent officer is prepared to accept.

The respondent officer accepted the offer of a prehearing conference wherein they admitted to the misconduct and accepted the proposed discipline of a one (1) day suspension without pay.

A report following the prehearing conference was forwarded to the OPCC for review. In reviewing the investigation and considering all the relevant factors, it was the Police Complaint Commissioner's view that the discipline agreed to at the prehearing conference was not adequate based on the circumstances of the misconduct.

Specifically, the discipline and/or corrective measures proposal of a one (1) day suspension did not adequately address the seriousness of the respondent officer's conduct. In the report, the prehearing conference authority cited other cases with similar penalties; however, these cases occurred prior to the Police Complaint Commissioner issuing an Information Bulletin to all police agencies to promote a more consistent approach in the determination of appropriate disciplinary or corrective measures for misconduct involving impaired driving offences committed by police officers.

The Police Complaint Commissioner noted that the proposed discipline of a one (1) day suspension for a drinking and driving offense was significantly less than other Canadian jurisdictions, where significant suspensions, demotion and dismissal are considered as potential penalties depending on the circumstances of the incident. The Commissioner indicated in his Bulletin that the public is increasingly concerned and intolerant of those who operate a motor vehicle while impaired by alcohol or drugs.

Further, retired judges acting as adjudicators and Discipline Authorities on these types of matters have also recognized the seriousness of impaired driving. This sentiment has also been supported in many Discipline Authority decisions. According to one such Discipline Authority:

This is a serious offence. [The Constable] knew his/her job was to be ever vigilant at removing that risk to the public. Instead, he/she put the public at risk with his/her own poor judgment that night. Drinking and driving is serious misconduct. Members need to conduct themselves in their off-duty time in a way that never endangers the public. Police officers are held to a higher standard than members of the public when it comes to conduct like this.

Therefore, the agreement reached at the prehearing conference was rejected by the Police Complaint Commissioner and the matter proceeded to a discipline proceeding pursuant to section 118(1) of the *Police Act*.

At the end of the discipline proceeding, the Discipline Authority proposed a three (3) day suspension in relation to the substantiated allegation of *Discreditable Conduct*.

The respondent officer did not exercise their right to file a written request with the Police Complaint Commissioner to arrange a Public Hearing or Review on the Record pursuant to section 136(1) of the *Police Act*. However, to promote accountability in the complaint process, all findings and determinations at a discipline proceeding are reviewed by the OPCC, regardless of whether a request has been made.

The OPCC determined that there was no reasonable basis to believe that the Discipline Authority's findings under section 125(1) were incorrect, or that the Discipline Authority incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128 of the *Police Act*. While the imposition of a three (3) day suspension was low for the conduct in question, it was within the range of acceptable outcomes based on the specific circumstances of this case. Therefore, there were insufficient grounds to arrange a Public Hearing or Review on the Record in the circumstances.

Our file with respect to this matter was concluded upon receipt of confirmation that, in accordance with the *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to by, the respondent officer had been completed, and their service record of discipline had been updated.

Reportable Injury – 2015-11194
Ordered Investigation – Initiated by PCC
Substantiated

Pursuant to section 89 of the *Police Act*, the police department first reported this matter to the OPCC as a reportable injury.

The circumstances were that a marked police van was stopped at an intersection when a young, highly intoxicated male approached and engaged the police officers in conversation. After several minutes of speaking with the male, the police van driver began to drive the van slowly in the direction of where the male's friends were. The male was following the police van and was insistent on continuing the conversation. The police van driver advised the male that he needed to go and attempted to drive away at slow speed. The intoxicated male began to clutch on to the door of the police van. The police van driver could see people from the group of friends pulling on the male in an effort to pull him away from the police van. The police van driver attempted to drive away. The male was able to gain a grip on the van door and was clutching on to the door of the vehicle. The police van driver jammed on the brakes. The male let go of the van door, falling to the ground. The police van driver then accelerated away and reportedly drove over the male's legs.

A female witness at the scene called 9-1-1 and another witness flagged down a nearby police officer for assistance. The police van returned to the scene of the collision to see several people with the male. The male was offered medical attention but he refused. Due to his high level of intoxication, the nature of the incident and concern for the possibility of injuries, the male was arrested and transported to hospital for assessment. The male was released from hospital with minor scrapes to his knees, hips and one elbow.

The Police Complaint Commissioner determined that the male's injuries did not meet the definition of serious harm or injury and, therefore, a section 89 Mandatory Order for Investigation would not be issued.

However, the Police Complaint Commissioner ordered an investigation pursuant to section 93(1) of the *Police Act*, having identified conduct on the part of the police officer that would, if substantiated, constitute misconduct under the *Police Act*. An Order for Investigation was issued with the following potential misconduct identified:

1. *Neglect of Duty* pursuant to section 77(3)m)(ii) of the *Police Act*. Specifically, dangerous driving.
2. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*. Specifically, not stopping at the scene of a collision.

An investigation was initiated and a Final Investigation Report was submitted to the Discipline Authority. After reviewing the Final Investigation Report, the Police Complaint Commissioner, in consultation with the Discipline Authority, directed that further investigative steps be taken pursuant to section 98(9) of the *Police Act*.

The *Police Act* investigator completed the further investigative steps and re-submitted the Final Investigation Report.

The Discipline Authority determined that the allegation *Neglect of Duty* had not been substantiated as the respondent officer was under the belief, albeit an erroneous belief, that the male had been pulled away by his friends. While the Discipline Authority did not agree with the police officer's decision to begin to move the police van with the male still holding on, or attempting to hold on, to the window frame, the Discipline Authority was of the view that this action fell just short of the threshold for a finding of misconduct.

The Discipline Authority determined that the allegation of *Discreditable Conduct* had been proven and offered the respondent officer a prehearing conference.

The OPCC reviewed all of the investigative materials and issued a Conclusion of Proceedings with respect to the *Neglect of Duty* allegation advising there was not a reasonable basis to believe the Discipline Authority's decision was incorrect. However, the OPCC shared the concerns noted by the Discipline Authority pertaining to the respondent officer moving the police van in the circumstances.

The OPCC noted that the police department referred the matter for an administrative review within the department. As this incident involved the contact of a police van and a person on a highway, the department's "Police Vehicle Collision/Damage" policy required that an Officer in Charge, or in some cases, a Deputy Chief Constable, must review the circumstances of the incident and may direct certain action, including issuing a violation ticket, where appropriate. The Discipline Authority referred this matter to the Officer in Charge of the Traffic Section for review.

The respondent officer accepted the offer of a prehearing conference and admitted to the misconduct. They accepted the proposed discipline of a written reprimand and further training with regard to report writing.

A report following the prehearing conference was forwarded to the OPCC for review. In reviewing the investigation and considering all the relevant factors in this case, it was the Police Complaint Commissioner's view that the disciplinary/correctives measures accepted at the prehearing conference were both correct and appropriate to the circumstances.

Therefore, the agreement reached at the prehearing conference was approved and the resolution is final and conclusive.

Our file with respect to this matter was concluded upon receipt of confirmation that, in accordance with the *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to by, a member or former member, had been completed, and their service record of discipline had been updated.

Mandatory External Investigation– 2015-10609
Discontinued

Police received reports of a male wielding a knife and stabbing people in Vancouver's downtown eastside. Officers utilized multiple less-lethal rounds fired from a bean bag shotgun in an attempt to take the affected person into custody; however, the less lethal rounds were ineffective at stopping his actions. The affected person then approached and actively began to stab a woman who had been standing nearby. In response, the affected person was shot by police and he succumbed to his wounds at the scene.

Section 89 of the *Police Act* relates to the reporting and investigation of incidents involving death, serious harm or reportable injuries to a person while they are in the custody or care of a member of the municipal police department, as a result of the operations of that municipal department, or as a result of the conduct of the member of a municipal department.

For cases involving serious harm or death, the Independent Investigations Office (IIO) is responsible for investigating the actions and decisions of the involved officers. The IIO must report the matter to Crown Counsel in cases where "an officer may have committed an offence under any enactment, including an enactment of Canada or another province." The IIO may also identify other conduct concerns not within their mandate but within the scope and jurisdiction of the OPCC.

The circumstances were reviewed and it was determined that the death of the affected person could be seen to have been the result of the conduct of a member of a municipal police department. The OPCC directed this matter be investigated by an external police agency pursuant to section 89 of the *Police Act*. In addition, the IIO asserted jurisdiction and conducted an investigation into this matter.

Due to the IIO's investigation, the investigation into this matter under the *Police Act* was suspended as the Police Complaint Commissioner determined that continuation of the *Police Act* proceedings would prejudice the ongoing criminal investigation or prosecution related to this matter.

The IIO subsequently issued a Public Report which included the determination of the Chief Civilian Director that: "based on a review of all of the evidence collected during the course of the investigation and the law as it applies, I do not consider that any police officer may have committed

an offence under any enactment and therefore the matter will not be referred to Crown counsel for a possible criminal prosecution."

In this case, the issue considered by the IIO was whether the subject officer reasonably fired their firearm at the affected person which subsequently caused his death and whether the death was the result of an unreasonable or excessive use of force given the totality of the circumstances.

In making their determination, the IIO investigation included, but was not limited to, the following material:

- Interviews, recordings and transcripts of statements from officers involved and civilian witnesses.
- Police officer's notes, police reports, and radio transmissions.
- Photographs and diagrams of the incident scene.
- Medical, firearms and forensic evidence.
- Video recordings of the incident.

Having had the opportunity to review the investigative materials in relation to this matter, it was the OPCC's view that any further investigation into the actions of respondent officers as they relate to the section 89 review of the death of the affected person was neither necessary nor reasonably practicable.

Based on a review of all the evidence, it was clear that the affected person attacked and stabbed one individual prior to stabbing a second innocent bystander. The presence of police, police verbal direction, followed by repeated use of a less lethal alternative had no effect. The totality of the evidence from witnesses who were in a position to clearly observe the fatal shooting, including that of the innocent bystander, support the finding that the involved officer's use of lethal force in these circumstances was reasonable and necessary. The OPCC agreed with the IIO's assessment that the statement of the innocent bystander who was stabbed was "particularly compelling and corroborative of the officers' statements justifying the shooting."

The OPCC's independent review did not reveal any other conduct on the part of the officers that would constitute misconduct pursuant to the *Police Act*. Further investigation into this matter would not reveal evidence that would indicate misconduct on the part of the members involved in this incident.

Accordingly, having regard to all the circumstances, we are directing that the investigation into this matter be discontinued pursuant to section 109(1)(a) of the *Police Act*.

Internal Discipline – 2016-11515
Dismissal

Internal discipline files are the responsibility of the police member's employer and are processed under Division 6 of the *Police Act*.

The internal Discipline Authority must provide the Police Complaint Commissioner with a copy of any recommendation on disciplinary or corrective measures arising from an internal discipline matter and the final decision reached by the internal Discipline Authority.

The police department advised the OPCC of the following:

1. A police officer touched another police officer in a manner that was alleged to have contravened the police department's Respectful Workplace Policy.

While on a break from recertification training, a police officer touched another police officer in an unwanted and inappropriate manner. Another police officer witnessed the entire interaction and it was also caught on video. The respondent officer was shown the video evidence during the investigation into the allegation.

The police department determined that the respondent officer ought to have reasonably known the detrimental effect the incident would have on the work environment and, specifically, on the police officer who was the subject of the unwanted physical contact. The respondent officer was on probation for other transgressions when this incident occurred.

The police department found that workplace harassment had occurred and dismissed the respondent officer.

Internal Discipline – 2015-11275
Unsubstantiated – Changes Made to Policy

A police officer took offence to comments made about them by fellow officers on three (3) separate occasions and, as a result, made three (3) bullying and harassment complaints.

Pursuant to departmental policy, the internal discipline investigation was assigned to an external police department for investigation.

Allegation 1: A telephone conversation was overheard in which two non-commissioned officers (NCO's) spoke about the complainant in a manner that was alleged to have contravened the police department's Respectful Workplace Policy.

The internal investigator found that even though there was no intent to cause the complainant embarrassment, as NCO's, the two police officers should have known that it was unprofessional to speak against another person or member while on speaker phone. While the comments did appear unprofessional, in the context that they were highlighting the lack of patrol resources, the behaviour did not meet the threshold for bullying and harassment.

Allegation 2: An NCO spoke to the complainant in a manner that was alleged to have contravened the police department's Respectful Workplace Policy.

While investigating this concern, the complainant disclosed that they had covertly recorded the conversation. The internal investigator found that the comments made by the NCO to the complainant were meant to set out the expectations he had as a supervisor to the complainant coming into his section. The comments did not meet the threshold for bullying and harassment.

Allegation 3: One of the NCO's indicated that they were the subject of an internal discipline investigation while at a dinner with other police officers and a civilian.

The internal investigator found that while it appeared unprofessional for the NCO to vent his frustrations in front of other police officers and a civilian, the comments did not meet the threshold of bullying or harassment.

Although the internal investigator found all three (3) allegations to be unsubstantiated, he recommended that an executive officer or an external human resource professional facilitate a mediation between the complainant and the respondent officers to re-establish working relationships.

The police department revised its Respectful Workplace Policy and provided four hours of Respectful Workplace training to all civilian staff, police officers and managers. This training was facilitated by a consultant who specialized in this field.

The Chief Constable issued a Standing Order regarding on duty personal recording and transcription. Regarding recording a co-worker by an officer "No officer may record an administrative or employment matter unless a "necessity" is demonstrated, for example, an established memory retention issue. If necessity is determined, then a department representative will make the recording and provide a copy to the officer."

Service or Policy – 2016-12183
Investigated – Policy Change

The complainant reported that his First Nations medicine bag was opened and searched without his consent subsequent to his arrest. Culturally, a medicine bag can only be opened, without the owner's consent, by an Elder. The complainant felt his medicine bag should have been placed in a sealed plastic bag and opened and searched by an Elder retained by the police department.

The complainant further advised that his medicine bag was placed on the roof of a police vehicle while it was raining and when it was returned to the complainant mold had formed, however, he was able to clean the mold from it.

The complainant felt that there was a lack of understanding of the cultural significance of medicine bags by police officers.

The OPCC determined that there were no public trust aspects to this complaint and forwarded the complaint to the police department's police board as a Service or Policy complaint in accordance with Division 5 of the *Police Act*. The police board reviewed the complaint and directed the police department to investigate the complaint pursuant to subsection 171(1)(a) of the *Police Act*.

As part of the investigation, a review of the police department's business practices was conducted. This review revealed that there was no specific direction to police officers on the handling of religious or cultural items, such as medicine bags.

While some police officers had received Aboriginal cultural sensitivity training (which included the proper way to handle a medicine bag), it was determined that all of the police department's officers could benefit from more information about cultural items and their significance. As a result a "policy statement" titled "Searches of Cultural or Religious Items and Clothing" was included in the existing policy Searches of Persons.

A resource document was linked to the policy statement. This document guides officers in the context and handling practices for culturally significant items, including medicine bags. This resource document was reviewed and supported by leaders from the local Aboriginal, Muslim, Sikh and Jewish communities.

The complainant was provided a copy of the police board's concluding letter and the investigation report. The complainant was informed that pursuant to section 172(2) of the *Police Act*, if he was dissatisfied with the actions of the police board, he could request a review by the Police Complaint Commissioner. The complainant did not request a review.

The OPCC examined the police board's decision and was satisfied with the outcome and informed the police board that the Police Complaint Commissioner would not be making any recommendations for further investigation, study, courses of action, or changes to service or policy pursuant to section 173(1) of the *Police Act*.

When informing the police board of this decision, the OPCC took the opportunity to commend the police board and police department for their initiative in conducting a review of the department's business practices and consequently, producing a document which could be used to train police officers in the handling of culturally significant items. The action taken not only addressed the issue reported by the complainant, but recognized that there were 'many diverse cultures and religions that co-exist, each with unique customs, beliefs and traditions.'

Accordingly, the file was closed.

Service or Policy – 2016-11932
Investigated – New Internal Business Practices

The complainant reported his concerns related to the police department's response to his request for a Police Information Check (PIC). The complainant reported that he submitted the request as a condition of employment with his new employer. The complainant was concerned with the length of time to process his request.

The OPCC determined that there were no public trust aspects to this complaint and forwarded the complaint to the police department's police board as a service or policy complaint in accordance with Division 5 of the *Police Act*.

The police board reviewed the complaint and directed the police department to investigate the complaint pursuant to subsection 171(1)(a) of the *Police Act*.

The police department's investigation determined that the delay was partially due to the extensive nature of the background check, however, deficiencies in the service were also noted. As a result, the Director of Information Management determined improvements could be made.

The complainant received an apology for the length of time it took to process his application and was provided a contact number should he have further concerns. As a result of this complaint, measures were put in place to improve the police department's customer service; staff members will advise PIC applicants about the processing time and how to make inquiries. This information included an email address that is also available on the department's website. Additionally, all files requiring

more than 30 days to complete will be brought to the IMS managers' attention, who will log the file on a shared spreadsheet and call the applicant to provide a status update.

The Section Manager met with both Supervisors of the Public Service Unit and outlined expectations and the process regarding PICs that are older than 30 days. Included in that discussion was the following information:

1. That the supervisors are required to review the Police Information Checks (PICs) to ensure they are completed before 30 days;
2. For PICs that will take longer than 30 days, the PIC is to be forwarded to the manager to assess the reason for the delay and contact the applicant to explain the circumstances;
3. The supervisors are now required to send the manager a "Day 4 Report" that essentially outlines the status and backlog of PICs.

The complainant was provided a copy of the police board's concluding letter and the investigation report. The complainant was informed that pursuant to section 172(2) of the *Police Act*, if he was dissatisfied with the actions of the police board he could request a review by the Police Complaint Commissioner. The complainant did not request a review.

The OPCC examined the police board's decision and was satisfied with the outcome and informed the police board that the Police Complaint Commissioner would not be making any recommendations for further investigation, study, courses of action or changes to service or policy pursuant to section 173(1) of the *Police Act*.

Accordingly, the file was closed.

You can see the *Police Act* in its entirety at: http://www.bclaws.ca/civix/document/id/complete/statreg/96367_01

SUBSTANTIATED ALLEGATION SUMMARIES

The following table provides summaries of all substantiated allegations against municipal officers which were concluded between April 1, 2016 and March 31, 2017.

Abbotsford

Internal Discipline

(OPCC File 2016-12323)

Misconduct: *Neglect of Duty* (failure to follow a supervisor's lawful order) **Date of Incident:** April 14, 2016	**Disciplinary/Corrective Measure:** • Verbal reprimand

On April 14, 2016, a police officer failed to attend the department's annual firearms qualifications. The police officer spoke directly to the firearms instructor and made alternative arrangements. The police officer failed to engage or involve his/her direct supervisor in this conversation or process despite being told on a previous occasion not to go outside the chain of command.

Ordered Investigation – Requested by Department

(OPCC File 2016-11835)

Misconduct: *Improper Use or Care of Firearms* (negligent discharge of a firearm) **Date of Incident:** April 25, 2016	**Disciplinary/Corrective Measure:** • Advice to future conduct

On April 25, 2016, a police officer attended the range for their annual firearms qualification. The police officer negligently discharged their police issued firearm in the cleaning area of the gun club. The bullet went through the cleaning table into the floor. The range building was closed to civilians at the time and the police officer was the only person in the designated cleaning area. There were no injuries sustained.

Internal Discipline

(OPCC File 2016-11822)

Misconduct 1: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** April 6, 2016	**Disciplinary/Corrective Measure:** • Dismissal

On April 6, 2016, while off duty, a probationary police officer entered into a conversation with a sex trade worker in relation to obtaining sexual services.

Misconduct 2: *Deceit* (false or misleading oral or written statement) **Date of Incident:** April 8, 2016	**Disciplinary/Corrective Measure:** • Dismissal

On April 8, 2016, the probationary police officer made several statements to the *Police Act* investigator in relation to the *Discreditable Conduct* allegation that were later determined to be untrue.

* As this officer was a recruit and had not yet passed probation, this matter was dealt with under the internal discipline process.

Ordered Investigation – Requested by Department

(OPCC File 2016-11687)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** March 13, 2016	**Disciplinary/Corrective Measure:** • Written reprimand

On March 13, 2016, while off duty, a police officer was the subject of a traffic stop for speeding. During the traffic stop, an odour of alcohol was detected from the off duty member and as a result, he/she was read the Approved Screening Device Demand. The off duty member provided two breath samples resulting in a "warn" reading. As a result, the off duty member received a motor vehicle violation ticket for speeding, a 24 hour suspension from driving pursuant to section 215 of the *Motor Vehicle Act* and had their vehicle impounded.

Ordered Investigation – Requested by Department

(OPCC File 2015-11295)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** November 18, 2015	**Disciplinary/Corrective Measures:** • 1 day suspension without pay • Undertake and complete Respectful Relationship counseling

On November 18, 2015, a police officer was involved in a domestic dispute with their partner.

The police officer was charged with one count of assault pursuant to the *Criminal Code*. The criminal proceeding was concluded and resulted in the issuance of a Peace Bond, pursuant to Section 810 of the *Criminal Code* to the police officer.

Central Saanich

Registered Complaint

(OPCC File 2014-9976)

Misconduct 1: *Abuse of Authority* (oppressive conduct) **Date of Incident:** October 20, 2013	**Disciplinary/Corrective Measures:** • 3 day suspension without pay • Training/Re-Training

The complainant reported that on October 20, 2013, her teenage daughter was mistakenly identified by a police officer as being the subject of a missing person complaint. A second police officer, known to the teenager, subsequently attended the scene. It was reported that this police officer conducted themselves in an oppressive manner during their interaction with the teenager.

Misconduct 2: *Deceit* (false or misleading oral or written statement) **Date of Incident:** Undated	**Disciplinary/Corrective Measures:** • 30 day suspension without pay • Training/Re-Training • Work under close supervision for a period of one year

The police officer made statements to the *Police Act* investigator concerning their actions on October 20, 2013, that were determined to be false or misleading.

Note: For mitigating reasons the two periods of suspension were to be concurrent.

The police officer was required to successfully complete, within a prescribed period of time, the following five Canadian Police Knowledge Network online courses: Note Taking, Report Writing, Theory of Communication and Memory, Customer Service in a Police Environment, and Police Ethics and Accountability.

CPSEU

No substantiated misconduct in this reporting period

Delta

Ordered Investigation – Requested by Department

(OPCC File 2016-11882)

Misconduct 1: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** April 12, 2016	**Disciplinary/Corrective Measure:** **Member 1** • Verbal reprimand **Member 2** • Verbal reprimand

On April 12, 2016, two police officers consumed alcohol in an unmarked police vehicle while waiting to board a BC ferry.

Misconduct 2: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** April 12, 2016	**Disciplinary/Corrective Measures:** **Member 3** • Written reprimand • Ethics and Conflict Resolution training

On April 12, 2016, a police officer purchased alcohol, consumed alcohol in an unmarked police vehicle while waiting to board a BC ferry, and then drove the police vehicle onto the ferry.

Misconduct 3: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** April 12, 2016	**Disciplinary/Corrective Measure:** **Member 4** • Written reprimand

On April 12, 2016, a senior police officer observed other police officers under their 'supervision' consume alcohol in an unmarked police vehicle. One of the police officers then drove the police vehicle onto a BC ferry. This senior officer did not intervene or take any action.

Registered Complaint

(OPCC File 2015-11356)

Misconduct: *Unauthorized Use of Police Facilities/Resources* (unauthorized search of CPIC/PRIME) **Date of Incident:** October 14, 2015	**Disciplinary/Corrective Measure:** **Member 1** • Verbal reprimand **Member 2** • Verbal reprimand **Member 3** • Ethics training

On October 14, 2015, three police officers conducted improper police database queries in relation to an off duty police officer's call for assistance.

Misconduct 2: *Improper Disclosure of Information* (disclosing information acquired as a police officer) **Date of Incident:** October 14, 2015	**Disciplinary/Corrective Measure:** **Member 1** • Ethics training **Member 3** • Written reprimand **Member 4** • Written reprimand

Three police officers improperly disclosed the information obtained from the improper police database queries in relation to an off duty police officer's call for assistance.

Misconduct 3: *Accessory to Misconduct* (aiding, abetting, or counselling misconduct) **Date of Incident:** October 14, 2015	**Disciplinary/Corrective Measure:** **Member 5** • Written reprimand

A police officer sent text messages encouraging fellow police officers to commit the misconduct of *Unauthorized Use of Police Facilitates/Resources* and *Improper Disclosure of information*.

Ordered Investigation – Initiated by PCC

(OPCC File 2015-11096)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** March 5, 2015	**Disciplinary/Corrective Measure:** • Counseling/Treatment

On March 5, 2015, a police officer spoke to a member of the public in a manner that was aggressive and contained profanities.

Registered Complaint

(OPCC File 2015-11044)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** August 2, 2015	**Disciplinary/Corrective Measures:** • Written reprimand • Counseling/Treatment • Legal refresher and Conflict Resolution training

On August 2, 2015, an off duty police officer unlawfully detained a male and female for an alleged theft at a home improvement store and made accusatory and derogatory remarks towards them. The police officer's conduct made store employees feel threatened and nervous.

Registered Complaint

(OPCC File 2015-10427)

Misconduct: *Discourtesy* (discourteous conduct) **Date of Incident:** August 29, 2014	**Disciplinary/Corrective Measure:** • Written reprimand

On August 29, 2014, while off duty, a police officer noted the presence of a male in a gym. The off duty police officer contacted police dispatch and queried the name of the male. Based on the results of that query, the off duty police officer contacted the on duty police supervisor to discuss his/her concerns and the necessity to conduct a street check of the male. An on duty police officer was dispatched as a cover officer for the street check. The off duty officer then approached the male in the gym, identified himself/herself as a police officer, and requested the male step outside. The off duty officer, by these actions, placed himself/herself on duty. During the street check a heated exchange occurred where the police officer and the male both used profanities.

Ordered Investigation – Requested by Department and Registered Complaint (OPCC File 2014-10099)

Misconduct 1: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** Between September 19, 2014 and October 17, 2014	**Disciplinary/Corrective Measures:** • 5 day suspension without pay • Counselling related to appropriate communications and relationships

While on duty, a police officer sent sexually explicit photos and videos of themselves in police uniform and business attire to a member of the public.

Misconduct 2: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** October 15, 2014	**Disciplinary/Corrective Measures:** • 30 day suspension without pay • Ethics and Accountability training • Work under close supervision

A police officer participated in sex acts while on duty.

Misconduct 3: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** October 16, 2014	**Disciplinary/Corrective Measures:** • 30 day suspension without pay • Ethics and Accountability training • Work under close supervision

A police officer participated in sex acts while on duty.

Misconduct 4: *Unauthorized Use of Police Facilities/Resources* (improper use of police equipment) **Date of Incident:** September 19, 2014	**Disciplinary/Corrective Measures:** • 3 day suspension without pay • Written reprimand • Departmental security policies training

A police officer queried police databases by means of a mobile data terminal for a purpose unrelated to the performance of the officer's duties.

Note: The suspensions were to run consecutively for a total suspension of 68 days.

Nelson

Ordered Investigation – Requested by Department and Registered Complaint (OPCC File 2014-9620)

Misconduct: *Abuse of Authority* (excessive force – empty hand) **Date of Incident:** May 1, 2014	**Disciplinary/Corrective Measure:** • Dismissal

On May 1, 2014, an off duty police officer used unnecessary force by punching a handcuffed female in the face after being advised by attending officers that they had the female under control.

The police officer was charged with one count of assault pursuant to the *Criminal Code*. The criminal proceeding concluded with the police officer receiving a sentence that included 30 days incarceration under the terms of a conditional sentence order, a no contact order for the involved parties, 12 months' probation, and counseling.

New Westminster

Ordered Investigation – Requested by Department (OPCC File 2016-11536)

Misconduct 1: *Neglect of Duty* (inadequate investigation) **Date of Incident:** December 29, 2015	**Disciplinary/Corrective Measure:** **Member 1** • Verbal reprimand **Member 2** • Verbal reprimand

On December 29, 2015, two police officers failed to adequately investigate a report of a suspicious circumstance complaint.

Misconduct 2: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** **Member 1** • Written reprimand

A police officer failed to seek the assistance of a supervisor when the police officer was uncertain about whether or not he had the grounds to arrest a suspect for breach of conditions.

Oak Bay

No substantiated misconduct in this reporting period

Port Moody

Ordered Investigation – Initiated by PCC (OPCC File 2016-11801)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** January 8, 2016	**Disciplinary/Corrective Measure:** • 2 day suspension

On January 8, 2016, an off duty police officer attended the police department, while intoxicated, and made inappropriate comments of a personal and sexual nature to another police officer.

SCBCTAPS

Internal Discipline

(OPCC File 2016-11936)

Misconduct: *Damage to Police Property* (misusing/losing/damaging police property) **Date of Incident:** May 24, 2016	**Disciplinary/Corrective Measure:** • Advice to future conduct

On May 24, 2016, a police officer intentionally struck the computer screen of a Mobile Data Terminal causing it to break after an error occurred that resulted in a loss of data.

Internal Discipline

(OPCC File 2016-11515)

Misconduct: *Neglect of Duty* (failure to comply with departmental policy/regulations) **Date of Incident:** January 19, 2016	**Disciplinary/Corrective Measure:** • Dismissal

On January 19, 2016, a police officer breached the department's Respectful Workplace Policy by inappropriately touching another officer in the workplace and repeating the unwanted contact after they were told to stop.

Internal Discipline

(OPCC File 2015-11274)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** November 23, 2015	**Disciplinary/Corrective Measure:** • Advice to future conduct

On November 23, 2015, a police officer included information in an affidavit that would likely bring discredit to the reputation of the police department.

Ordered Investigation – Requested by Department

(OPCC File 2015-11357)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** Between May 2015 and November 2015	**Disciplinary/Corrective Measures:** • 8 day suspension • Ethics training

A police officer used funds from an account opened for a charitable purpose for personal expenditures.

Crown Counsel determined that the evidence did not meet charge approval standard. The funds were repaid by the police officer.

Ordered Investigation – Requested by Department

(OPCC File 2015-11237)

Misconduct: *Unauthorized Use of Police Facilities/Resources* (unauthorized search of CPIC/PRIME) **Date of Incident:** September 1, 2015	**Disciplinary/Corrective Measure:** • Written reprimand

On September 1, 2015, a police officer queried their tenant using police databases.

Ordered Investigation – Requested by Department and Registered Complaint

(OPCC File 2015-11071)

Misconduct: *Neglect of Duty* (failure to account for money/property received) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • Work under close supervision

On February 11, 2015, a police officer recovered two backpacks that were left on a bus. The police officer entered the two backpacks and the 23 items contained therein into PRIME. It was later determined that four of the items could not be located.

Misconduct 2: *Neglect of Duty* (inadequate documentation /notes/records) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • Work under close supervision

The police officer failed to record the locker number of the seized property in their notebook contrary to departmental policy.

Misconduct 3: *Neglect of Duty* (inadequate documentation /notes/records) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • Work under close supervision

The police officer failed to make a notebook entry listing the property seized on February 11, 2015, contrary to departmental policy, and the police officer failed to save or preserve evidence of the returned property, which consisted of a sheet of foolscap paper, contrary to department policy.

Note: The police officer was to work under close supervision for a total of 48 working shifts.

Registered Complaint

(OPCC File 2012-7201)

Misconduct 1: *Abuse of Authority* (unlawful arrest) **Date of Incident:** February 9, 2012	**Disciplinary/Corrective Measure:** **Member 1** • 1 day suspension without pay **Member 2** • 1 day suspension without pay

On February 9, 2012, two police officers arrested the complainant without good and sufficient cause.

Misconduct 2: *Abuse of Authority* (excessive force – empty hand, OC spray) **Date of Incident:** February 9, 2012	**Disciplinary/Corrective Measures:** **Member 1** • 2 day suspension without pay • Work under close supervision for a minimum of 500 work hours **Member 2** • 2 day suspension without pay • Work under close supervision for a minimum of 500 work hours

On February 9, 2012, two police officers used unnecessary force to effect the arrest of the complainant.

Misconduct 3: *Neglect of Duty* (inadequate documentation /notes/records) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** **Member 2** • Advice to future conduct

One of the police officer's police notes did not comply with departmental policy on notebooks/notebook entries.

Note: The suspensions were to be served consecutively.

The two police officers were each charged with one count of assault pursuant to the *Criminal Code*. The criminal proceeding concluded with the officers receiving a conditional discharge, a four month probation order, and a requirement to complete 25 hours of community work.

Saanich

Registered Complaint

(OPCC File 2016-11560)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** January 29, 2016	**Disciplinary/Corrective Measure:** • Advice to future conduct

A police officer responded in an official capacity to a request for assistance from a person they knew well.

Registered Complaint

(OPCC File 2016-11505)

Misconduct 1: *Abuse of Authority* (excessive force - handcuffs) **Date of Incident:** January 19, 2016	**Disciplinary/Corrective Measure:** • Verbal reprimand

On January 19, 2016, a police officer, without lawful authority, grabbed the complainant, pushed him to the ground, and applied handcuffs.

Misconduct 2: *Abuse of Authority* (unlawful detention) **Date of Incident:** January 19, 2016	**Disciplinary/Corrective Measure:** • Verbal reprimand

On January 19, 2016, a police officer detained and searched the complainant without good or sufficient cause.

Adjudicative Review:
Following an investigation, the Discipline Authority determined the evidence did not appear to substantiate either allegation of *Abuse of Authority* against the police officer. The Police Complaint Commissioner disagreed with the Discipline Authority's findings and on December 7, 2016, appointed retired BC Court of Appeal Judge, Wally Oppal, Q.C., to review the evidence pursuant to section 117 of the *Police Act*.

On January 25, 2017, the Honourable Wally Oppal, Q.C., issued his Notice of Adjudicator's decision where he determined that the evidence appeared to substantiate both the allegations of *Abuse of Authority* and offered the police officer a prehearing conference.

An officer with the Central Saanich Police Department was appointed to sit as an external prehearing conference authority and the above discipline was agreed upon.

When rendering his decision, the prehearing conference authority noted that the police officer engaged in training on their own initiative prior to the prehearing conference. Specifically, the police officer undertook training on forming reasonable grounds to detain and arrest; had a one-on-one training session with the Saanich Police Legal Updates Instructor to review the grounds required for investigative detention and arrest; and also reviewed key cases in this area including, *R. v. Mann*, [2004] 3 S.C.R. 59 and *R. v. Grant*, 2009 SCC 32. In addition, the police officer reviewed the B.C. Civil Liberties Association's "The Arrest Handbook – A Guide to your Rights." The police officer also fully supported the use of this incident as a department-wide training session as they felt that this process had been a tremendous learning experience and thought other officers at the department would benefit from learning from this incident as well.

For further information on this decision, please visit the OPCC website at www.opcc.bc.ca under Adjudications.

Ordered Investigation – Requested by Department
(OPCC File 2015-10833)

Misconduct: *Neglect of Duty* (failure to comply with departmental policy/regulations) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • Advice to future conduct

A police officer lost a personal thumb drive that was not encrypted and contained information that was the property of the Saanich Police Department. The lost information included digital material related to previously written search warrants and un-redacted confidential source information.

Stl'atl'imx Tribal Police

Registered Complaint
(OPCC File 2015-12140)

Misconduct: *Abuse of Authority* (unlawful arrest) **Date of Incident:** March 14, 2015	**Disciplinary/Corrective Measure:** • Verbal reprimand

On March 14, 2015, a police officer arrested the complainant for public intoxication when the complainant was in fact inside a residence and not a "public place."

Misconduct 2: *Abuse of Authority* (excessive force – empty hand) **Date of Incident:** March 14, 2015	**Disciplinary/Corrective Measure:** • Verbal reprimand

On March 14, 2015, the police officer used unnecessary force on the complainant to effect the arrest when other options could have been utilized.

Vancouver

Ordered Investigation – Requested by Department
(OPCC File 2016-12313)

Misconduct: *Unauthorized Use of Police Facilities/Resources* (unauthorized search of CPIC/PRIME) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • Written reprimand

A police officer searched police databases for a purpose unrelated to duties as a police officer.

Misconduct 2: *Improper Disclosure of Information* (disclosing information acquired as a police officer) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • Written reprimand

A police officer improperly disclosed confidential information acquired from police databases to a member of the public.

Ordered Investigation – Initiated by PCC
(OPCC File 2016-12143)

Misconduct: *Neglect of Duty* (dangerous driving) **Date of Incident:** January 21, 2016	**Disciplinary/Corrective Measure:** • Advice to future conduct

On January 21, 2016, a police officer failed to stop at a red light and caused a collision with a cyclist. The collision caused injury to the cyclist consisting of a cut above their right eye that required sutures, chipped teeth and bruised legs.

Ordered Investigation – Requested by Department
(OPCC File 2016-12014)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** June 25, 2016	**Disciplinary/Corrective Measure:** • 3 day suspension without pay

On June 25, 2016, while off duty, a police officer operated a motor vehicle while under the influence of alcohol in contravention of the *Motor Vehicle Act*.

Ordered Investigation – Requested by Department
(OPCC File 2016-12004)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** June 6, 2016	**Disciplinary/Corrective Measure:** • Advice to future conduct

On June 6, 2016, a police officer intentionally discharged a live simunition round at a police recruit during a training exercise.

The OPCC noted that the police officer lost their secondary employment status as an instructor due to this incident, which will have a significant impact on their personal situation in the future, which mitigated the need for a more significant penalty than the one imposed.

Ordered Investigation – Requested by Department
(OPCC File 2016-11976)

Misconduct 1: *Improper Use or Care of Firearm* (unsafe storage of a firearm) **Date of Incident:** June 13, 2016	**Disciplinary/Corrective Measure:** • Verbal reprimand

On June 13, 2016, a police officer neglected to unload a C8 weapon before storing it in their locker.

Misconduct 2: *Improper Use or Care of Firearm* (negligent discharge of a firearm) **Date of Incident:** June 14, 2016	**Disciplinary/Corrective Measure:** • Verbal reprimand

On June 14, 2016, a police officer negligently discharged their weapon in a locker room located at the police station. No one was injured and only minor damage resulted.

Ordered Investigation – Requested by Department
(OPCC File 2016-11962)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** May 21, 2016	**Disciplinary/Corrective Measures:** **Member 1** • Written reprimand **Member 2** • 1 day suspension without pay

On May 21, 2016, two intoxicated off duty police officers refused to leave a casino after being directed to do so by casino security.

Registered Complaint
(OPCC File 2016-11586)

Misconduct: *Neglect of Duty* (failure to provide assistance - general) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • Advice to future conduct

A police officer failed to contact the complainant despite the complainant leaving multiple messages over a two month timeframe.

Ordered Investigation – Requested by Department
(OPCC File 2016-11585)

Misconduct: *Improper Use or Care of Firearms* (negligent discharge of a firearm) **Date of Incident:** February 12, 2016	**Disciplinary/Corrective Measure:** • Written reprimand

On February 12, 2016, a police officer attended the range for a scheduled firearms training day. The scheduled start time for the training was 0700 hours. At approximately 0645 hours, the police officer was inside the range's club house conducting self-directed "dry fire" drills. The police officer was unaware that a magazine was loaded with a live round of ammunition. As the police officer pulled the trigger, the firearm discharged and a bullet went through a window. There was no further property damage and no one was injured.

Ordered Investigation – Initiated by PCC
(OPCC File 2016-11578)

Misconduct: *Improper Use or Care of Firearms* (negligent discharge of a firearm) **Date of Incident:** May 13, 2016	**Disciplinary/Corrective Measure:** • Verbal reprimand

On May 13, 2016, a police officer was cleaning their police issued firearm in the department's gun cleaning room. The police officer placed a magazine in the weapon, moved the slide forward and pulled the trigger. A round subsequently discharged into a wall. No one was injured.

Misconduct 2: *Improper Use or Care of Firearms* (unsafe storage of a firearm) **Date of Incident:** May 11, 2016	**Disciplinary/Corrective Measure:** • Verbal reprimand

During the *Police Act* investigation, it was determined that the police officer stored their firearm with a loaded magazine in the magazine well. A firearm with a loaded magazine in the magazine well is considered a loaded firearm and storing a loaded firearm is in contravention of departmental policy.

Registered Complaint

(OPCC File 2015-11276)

Misconduct: *Abuse of Authority* (unlawful arrest) **Date of Incident:** May 18, 2015	**Disciplinary/Corrective Measures:** • 1 day suspension • Training/Re-training

On May 18, 2015, a police officer detained the complainant as a suspect in a break and enter. Eventually, it was determined that the complainant was not in fact the suspect police were looking for and the complainant was released. The police officer then arrested the complainant for Breach of the Peace. It was later determined that the officer did not have the requisite grounds to arrest the complainant for Breach of the Peace.

Misconduct 2: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** May 18, 2015	**Disciplinary/Corrective Measures:** • 1 day suspension • Training/Re-training

The complainant also reported that upon release from custody, the police officer directed that the complainant be transported to North Vancouver, which was both against departmental policy and an inconvenience to the complainant.

Adjudicative Review:
Following an investigation, the Discipline Authority determined the evidence did not appear to substantiate the allegations of *Discreditable Conduct* or *Abuse of Authority* against the police officer. The Police Complaint Commissioner disagreed with the Discipline Authority's findings and on October 5, 2016, appointed retired Provincial Court Judge Carole Lazar to review the evidence pursuant to section 117 of the *Police Act*.

On October 16, 2016, Ms. Lazar issued her Notice of Adjudicator's Decision where she determined that the evidence appeared to substantiate the allegations of *Discreditable Conduct* and *Abuse of Authority*.

An officer with the Delta Police Department was appointed to sit as an external prehearing conference authority. A prehearing conference was offered to the police officer and the above discipline was agreed upon.

Note: Suspensions were to be served consecutively.

The training consisted of materials related to Breach of the Peace arrests with respect to the *Criminal Code* of Canada and departmental policy. This included the limitations on where a person can be transported after they have been arrested for Breach of the Peace.

For further information on this decision, please visit the OPCC website at www.opcc.bc.ca under Adjudications.

Registered Complaint
(OPCC File 2015-11259)

Misconduct: *Neglect of Duty* (improper/inadequate documentation of seized property) **Date of Incident:** November 2, 2015	**Disciplinary/Corrective Measure:** • Verbal reprimand

On November 2, 2015, a police officer removed a folding knife, a fixed blade knife and a wrist filler from an intoxicated person before placing him in a police transport vehicle. The police officer did not secure those items at the property office nor comment on them in their police report. The items were subsequently returned to the complainant.

Registered Complaint
(OPCC File 2015-11126)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** July 25, 2015	**Disciplinary/Corrective Measure:** • Written reprimand

On July 25, 2016, a police officer took enforcement action in relation to an incident in which they were personally involved.

Misconduct 2: *Improper Disclosure of Information* (disclosing information acquired as a police officer) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • Written reprimand

The police officer disclosed part of a police report to the complainant's employer.

Ordered Investigation – Requested by Department
(OPCC File 2015-10826)

Misconduct: *Unauthorized Use of Police Facilities/Resources* (unauthorized use of police equipment) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • 1 day suspension

On multiple occasions, a police officer used their department email account to solicit donations for a private non-profit organization.

Misconduct 2: *Neglect of Duty* (failure to follow supervisor's lawful order) **Date of Incident:** March 19, 2015	**Disciplinary/Corrective Measure:** • 1 day suspension

The police officer was provided with one verbal and two written direct orders to cease using police resources for duties unrelated to their position as a police officer. The police officer signed both written orders indicating that they understood the contents. However, the police officer continued, for an extended period of time, to use his department email to send and/or receive emails that were unrelated to their duties as a police officer.

Note: Suspensions to run consecutively.

Ordered Investigation – Requested by Department and Registered Complaint

(OPCC File 2015-10560)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • Dismissal

A police officer had inappropriate contact with the female victim of a sexual assault that the police officer was investigating.

Victoria

Internal Discipline

(OPCC File 2016-12356)

Misconduct: *Improper Disclosure of Information* (disclosing information acquired as a police officer) **Date of Incident:** Undated	**Disciplinary/Corrective Measure:** • Verbal reprimand

A police officer disclosed an internal police document to Family Court as part of a dispute with their partner.

Ordered Investigation – Initiated by PCC

(OPCC File 2015-11194)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** October 10, 2015	**Disciplinary/Corrective Measures:** • Written reprimand • Referral for formal training with regard to report writing

On October 10, 2015, a police officer was involved in a minor collision with a pedestrian and failed to stop.

Ordered Investigation – Requested by Department

(OPCC File 2015-11086)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** August 1, 2015	**Disciplinary/Corrective Measure:** • 1 day suspension

On August 1, 2015, a police officer participated in a ride along with another policing agency in violation of departmental policy.

Misconduct 2: *Unauthorized Use of Police Facilities/Resources* (unauthorized use of police equipment) **Date of Incident:** August 1, 2015	**Disciplinary/Corrective Measure:** • Written reprimand

On August 1, 2015, a police officer used department equipment for purposes unrelated to the performance of their duties.

Ordered Investigation – Requested by Department
(OPCC File 2015-10904)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** June 25, 2015	**Disciplinary/Corrective Measure:** • 4 day suspension

On June 25, 2015, while off duty, a police officer failed to cooperate with an impaired driving investigation.

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** June 25, 2015	**Disciplinary/Corrective Measure:** • 4 day suspension

On June 25, 2015, while off duty, a police officer operated a motor vehicle while impaired in contravention of the *Motor Vehicle Act*.

Adjudicative Review:
Following an investigation, the Discipline Authority determined on October 30, 2015, that the *Discreditable Conduct* allegation related to operating a motor vehicle while impaired was substantiated and offered the police officer a prehearing conference. At the prehearing conference, a 4 day suspension was agreed upon. The Discipline Authority did not find that two other *Discreditable Conduct* allegations had been substantiated.

The Police Complaint Commissioner disagreed with the Discipline Authority's findings that the two remaining *Discreditable Conduct* allegations were not substantiated and, on November 26, 2015, appointed retired BC Supreme Court Judge Ian Pitfield to review the evidence pursuant to section 117 of the *Police Act*.

On December 9, 2015, Mr. Pitfield issued his Notice of Adjudicator's Decision where he determined that the evidence appeared to substantiate one further allegation of *Discreditable Conduct* for failing to cooperate with an impaired driving investigation.

An officer with the Central Saanich Police Service was appointed to sit as an external prehearing conference authority. A prehearing conference was offered to the police officer where a 6 day suspension was agreed upon.

The Police Complaint Commissioner did not believe that the discipline agreed to, was within the appropriate range and rejected the prehearing conference agreement. Therefore, the matter proceeded to a discipline proceeding.

The Honourable Ian Pitfield was the Discipline Authority. As Discipline Authority, Mr. Pitfield noted that the police officer accepting a 6 day suspension fell within what he considered the appropriate range before taking into account the specific circumstances. However, it was Mr. Pitfield's view that the bifurcation of the process resulted in a cumulative suspension of 10 days which was excessive having regard for prior decisions and sanctions to date. Taking everything into account, Mr. Pitfield imposed a 4 day suspension without pay to be served consecutively to the sanction imposed earlier for the driving default for a total of an 8 day suspension.

For further information on this decision, please visit the OPCC website at www.opcc.bc.ca under Adjudications.

West Vancouver

Ordered Investigation – Initiated by PCC
(OPCC File 2015-11200)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** October 11, 2015	**Disciplinary/Corrective Measures:** • 10 day suspension • Reassigned to non-supervisory duties for a period of not less than 9 months and thereafter not be assigned to supervisory duties until assessed by the Chief Constable or his designate as being suitable • Counselling for a period of 18 months with a letter from the practitioner every 90 days asserting that they are aware of no concerns in relation to the police officer's misuse of alcohol.

On October 11, 2015, while off duty, a police officer operated a motor vehicle while impaired in contravention of the *Motor Vehicle Act*.

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** October 11, 2015	**Disciplinary/Corrective Measure:** • 2 day suspension

On October 11, 2015, while off duty, the police officer identified themselves as a police officer during the impaired driving investigation and asked for preferential treatment.

At the end of the *Police Act* investigation, the Discipline Authority proposed dismissal as the disciplinary or corrective measure for each count of misconduct.

Adjudicative Review:
Pursuant to section 137 of the *Police Act*, where a Discipline Authority proposes a disciplinary measure of dismissal or reduction in rank, upon written request from the police officer, the Commissioner must promptly arrange a Public Hearing or Review on the Record.

On September 26, 2016, the police officer requested a Public Hearing.

The Police Complaint Commissioner determined that it was not necessary to examine witnesses or receive evidence not currently part of the record of the disciplinary decision and, on October 26, 2016, ordered a Review on the Record.

The Honourable Carol Baird Ellan, retired British Columbia Provincial Court Justice, was appointed to preside as adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

On December 19, 2016, Ms. Baird Ellan issued her Decision of the Adjudicator, wherein she imposed the above discipline and/or correct measures. However, in light of the police officer having been suspended

without pay by the police department for over a month in December 2015 and January 2016, and was off work again without pay since late September 2016, following the dismissal imposed by the Discipline Authority, the adjudicator specified that the 10 day suspension and 2 day suspension has already been long satisfied the purposes of the *Police Act*.

For further information on this decision, please visit the OPCC website at www.opcc.bc.ca under Adjudications.

Registered Complaint
(OPCC File 2015-11160)

Misconduct: *Discreditable Conduct* (conduct that discredits the department) **Date of Incident:** September 24, 2015	**Disciplinary/Corrective Measures:** • Advice to future conduct

A police officer displayed aggressive behaviour and threatened to report the complainants for child neglect when those grounds for reporting did not exist.

STATISTICS

Introduction

When a complaint is received at the OPCC, a file is opened and assigned to an investigative analyst. All complaints are reviewed to determine whether they are admissible pursuant to the *Police Act* and, if so, complaints are then broken down into their individual allegations. An admissible complaint file often contains more than one allegation, involving one or more officers.

The following is an example of how one complaint file can result in multiple allegations and results:

> *A complainant states that three officers entered his residence without a warrant and two officers used excessive force in order to handcuff him. The complainant further states one officer unlawfully seized property that was subsequently lost.*

The admissibility analyst reviews the complaint and breaks it down into its individual components or "allegations." The above complaint would likely be broken down into the following allegations of misconduct as defined by the *Police Act*:

Abuse of Authority	unlawful entry – involving three officers
Abuse of Authority	excessive force – involving two officers
Abuse of Authority	unlawful seizure of property – involving one officer
Neglect of Duty	improper care and handling of seized property – involving one officer

Following the investigation, the Discipline Authority may determine that none, some or all of the allegations of misconduct have been proven against none, some or all of the officers. Continuing with the example above, the decision may be:

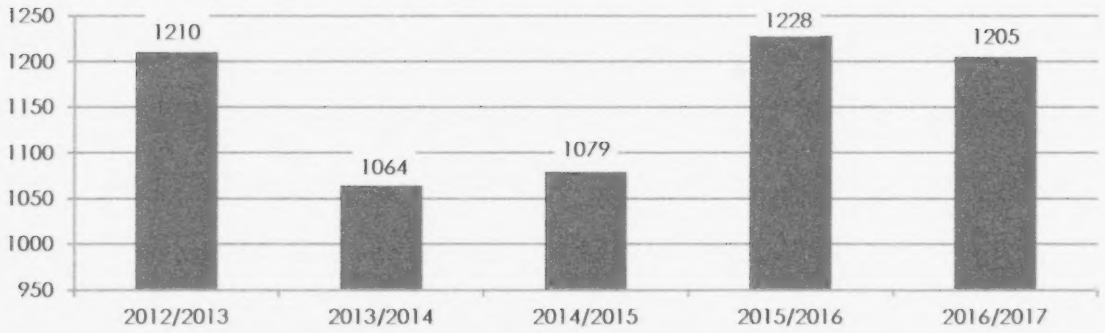
Abuse of Authority	unlawful entry – substantiated against officers 1, 2 and 3
Abuse of Authority	excessive force – substantiated against officer 2
Abuse of Authority	unlawful seizure of property – not substantiated
Neglect of Duty	improper care and handling of seized property – not substantiated

A Discipline Authority's decision is final and conclusive unless the Commissioner considers there is a reasonable basis to believe the decision is incorrect. Please note the data contained in the following report may vary slightly from previously released statistical reports. Where differences exist, it can be assumed that the most current data released reflects the most accurate and up-to-date data.

FILES OPENED

There was a modest decrease in the number of files opened in 2016/2017 compared to the previous year. This decrease is largely a result of fewer registered complaints filed. In 2016/2017, the OPCC received 445 registered complaints compared to 530 complaints the previous year. The OPCC determined 185 complaints were found to be admissible and forwarded those complaints to the police department for investigation.

Yearly Comparisons (past 5 years)



Year- By-Year Comparisons by Department

Department	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017
Abbotsford	93	105	83	81	142
Central Saanich	9	6	10	5	10
CFSEU	1	1	3	2	1
Delta	70	46	61	58	60
Nelson	7	12	14	8	17
New Westminster	63	48	73	62	50
Oak Bay	5	5	7	8	10
Port Moody	25	27	24	30	23
Saanich	64	54	78	120	93
SCBCTAPS	72	52	46	85	105
Stl'atl'imx	6	1	4	1	-
Vancouver	596	540	530	599	522
Victoria	153	134	113	132	142
West Vancouver	46	33	33	37	30
TOTAL FILES OPENED	**1210**	**1064**	**1079**	**1228**	**1205**

The Vancouver Police Department and the Victoria Police Department consistently have the greatest number of files opened each fiscal year. These areas also have higher population counts and more sworn police officers as compared to the other municipalities.

COMPLAINT CATEGORIES

REGISTERED COMPLAINTS	Public trust complaints about a police officer's conduct or actions that affect a member of the public.
QUESTIONS OR CONCERNS	If a member of the public has a question or concern about a municipal police officer's conduct, but does result in the making of a registered complaint, he or she may contact a municipal police department directly. The member of the municipal police department who receives the question or concern must inform the professional standards section of the involved municipal police department. The professional standards section must record the question or concern and forward a copy of the record, along with how it was resolved, to the Office of the Police Complaint Commissioner for review.
ORDERED INVESTIGATIONS & MANDATORY EXTERNAL INVESTIGATIONS	Complaint investigations may be ordered by the Commissioner, whether requested by a department or as a result of information received from any source that raises concerns about officer misconduct. The *Police Act* also requires the Commissioner to order a mandatory external investigation into any incident resulting in serious harm or death.
MONITOR FILES	Opened when information is received by the OPCC from the police, including reportable injuries, or from other sources, such as media reports, that may require an investigation pursuant to the *Police Act*. Typically, these are incidents that are serious in nature or that have generated media attention but no potential disciplinary defaults have yet been identified. These files are held open until a report is received from the police. The matter is reviewed and a decision is made as to whether an Ordered Investigation is required. If no action is deemed necessary, the file is concluded as "reviewed and closed."
INTERNAL DISCIPLINE FILES	Involve performance management issues or employer/employee concerns that do not affect members of the public; are not the subject of an admissible complaint; and no overriding public interest in proceeding with the matter as a public trust matter.
SERVICE OR POLICY FILES	Involve the quality of a police department's service to the community or regarding their operating policies.

All adjudicative decisions are available on the OPCC website at www.opcc.bc.ca.

COMPLAINT TYPES

Files Opened by Type (past five years)

Types of Files	2012/2013		2013/2014		2014/2015		2015/2016		2016/2017	
Internal Discipline	32	3%	14	1%	16	1%	11	1%	16	1%
Monitor	304	25%	321	30%	305	28%	419	34%	462	38%
Questions or Concerns	243	20%	113	11%	135	13%	205	17%	218	18%
Mandatory External Investigations (s. 89)	5	<1%	28	3%	24	2%	15	1%	7	1%
Investigations Initiated by PCC	16	1%	26	2%	20	2%	11	1%	19	2%
Investigations Requested by Department	35	3%	41	4%	34	3%	28	2%	26	2%
Registered Complaints	575	48%	518	49%	531	50%	530	43%	445	37%
Service or Policy[1]	-	-	3	<1%	14	1%	9	1%	12	1%
TOTAL	1210		1064		1079		1228		1205	

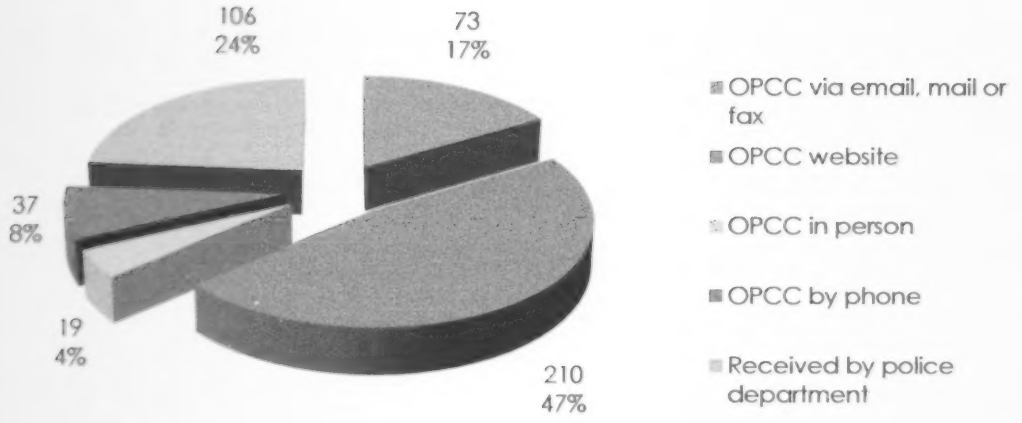
Although the OPCC saw a decrease in the number of registered complaints filed, other file types have shown an increase, particularly for questions or concerns and monitor files. Monitor files include reportable injury notifications and other matters that police departments report to the OPCC. Out of the 462 monitor files, 426 of those files are reportable injury notifications which departments are statutorily required to send to the OPCC for review.

[1] Beginning in 2013/2014, the OPCC modified the way it reports *Service or Policy Complaints*. Statistical comparisons with earlier years is not yet possible.

Files Opened in 2016/2017 by Department & Category

	TOTAL	Admissible Registered	Inadmissible Registered	Withdrawn Prior to Admissibility Determination	Mandatory External Investigation	Ordered Investigation (Dept. Request)	Ordered Investigation (PCC Initiated)	Monitor	Question or Concern	Internal Discipline	Service or Policy
Abbotsford	142	16	18	0	0	2	3	92	8	3	0
Central Saanich	10	2	1	1	0	0	0	3	3	0	0
CFSEU	1	0	0	0	0	0	0	1	0	0	0
Delta	60	12	11	1	0	4	2	21	7	2	0
Nelson	17	6	3	1	0	0	0	2	0	4	1
New Westminster	50	9	8	0	0	2	2	20	8	0	1
Oak Bay	10	1	2	1	0	1	0	0	5	0	0
Port Moody	23	4	4	0	0	1	1	3	10	0	0
Saanich	93	10	18	3	1	2	1	19	39	0	0
SCBCTAPS	105	4	9	0	0	0	0	16	72	3	1
Stl'atl'imx	0	0	0	0	0	0	0	0	0	0	0
Vancouver	522	102	113	6	5	12	8	223	45	3	5
Victoria	142	17	47	6	1	1	2	57	6	1	4
West Vancouver	30	2	7	0	0	1	0	5	15	0	0
TOTAL	1205	185	241	19	7	26	19	462	218	16	12

How Registered Complaints Were Received in 2016/2017



There are a variety of ways to register a complaint against a municipal police officer or department. Complainants use the OPCC website most frequently to file a complaint, followed by filing a complaint directly with the police department. Police departments are required to forward all registered complaints and questions or concerns to the OPCC for assessment and review.

ADMISSIBILITY

Admissibility of Registered Complaints Received in 2016/2017

The *Police Act* requires that all registered complaints must first be reviewed by the OPCC to determine whether they are admissible under Division 3, Public Trust of the *Police Act*. In order for a complaint to be deemed admissible, it must:

1. Contain an allegation of conduct that, if substantiated, would constitute misconduct as defined by the Act;
2. Be filed within one year of when the incident occurred; and
3. Not be frivolous or vexatious.

A complaint deemed "inadmissible" under Division 3 could still be investigated under a different division of the *Police Act*. If the complaint contains allegations that concern a department's services or policies, it would be processed under Division 5 of the Act.

A registered complaint must also involve a municipal police department to be under the jurisdiction of the OPCC.

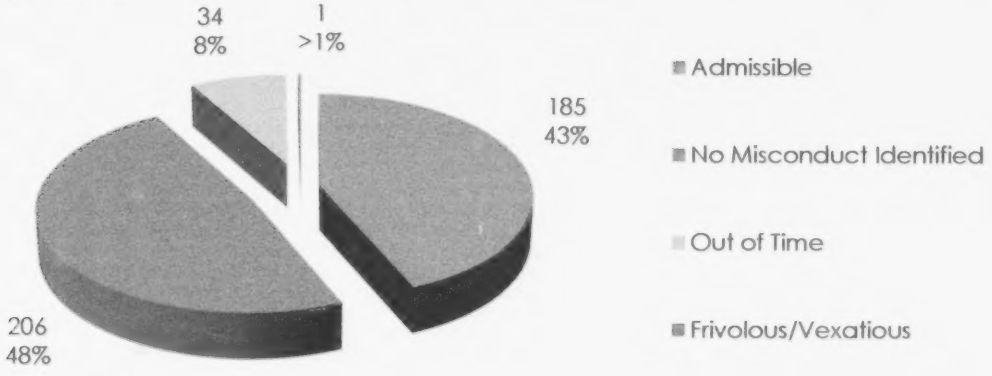
Breakdown of Admissibility Reviews in 2016/2017

When conducting an admissibility review, the primary document relied upon is the complaint itself. However, if the information in the complaint is not clear, an OPCC analyst will contact the complainant to confirm the material aspects of the complaint. If necessary, the analyst may contact the originating police department for further information in order to have context in which to assess the allegations and arrive at a principled decision regarding the admissibility of the complaint.

Analysts are careful not to weigh the evidence at this stage, but in exercising their gatekeeping function, they must ensure they have considered all the relevant circumstances which provide an accurate context to the matter.

With this important gatekeeping role, the OPCC has been able to ensure that those complaints which meet the admissibility criteria are forwarded to municipal police departments for Alternative Dispute Resolution, or an in-depth examination.

Admissibility Assessments



A total of 426 admissibility assessments were completed in 2016/2017. In 48% of the assessments, no misconduct was identified in the complaint. When a complaint is determined to be inadmissible, complainants receive a letter outlining the reason why their complaint was not admissible.[2] Complaints must be filed within 12 months of the date that the incident occurred. The Commissioner can extend the time limit for making a complaint but there must be good reasons for doing so and it must not be contrary to the public interest. In 34 admissibility assessments, it was determined that the complaint was not made within the 12 months' time frame and the Commissioner did not extend the time to make the complaint. These complaints were all determined to be inadmissible.

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* 19 (4%) complaints were withdrawn prior to the completion of an admissibility review. "Withdrawn" complaints here mean that a complainant withdrew his or her complaint prior to an admissibility assessment.

Admissibility Assessments (past five years)

Breakdown of Registered Complaints by Fiscal Year								
Fiscal year	Total Registered Complaints Received	Admissible	Inadmissible					
			No Misconduct Identified	Filed Out of Time	Frivolous/ Vexatious	No Jurisdiction	Service or Policy Component Identified (Division 5)	Withdrawn Prior to an Admissibility Assessment
2012/2013	575	264 of 562 (47%)	218 (39%)	45 (8%)	6 (1%)	23 (4%)	6 (1%)	13
2013/2014	518	228 of 504 (45%)	223 (44%)	33 (7%)	6 (1%)	7 (1%)	7 (1%)	14
2014/2015	531	198 of 519 (38%)	273 (53%)	42 (8%)	3 <1%	3 <1%	-	12
2015/2016	530	234 of 514 (46%)	232 (45%)	30 (6%)	17 (3%)	1 <1%	-	16
2016/2017	445	185 of 426 (43%)	206 (48%)	34 (8%)	1 <1%	-	-	19

The average admissibility rate for the past five fiscal years is **44%.** The majority of complaints are deemed inadmissible because the complainant has not identified an allegation of misconduct pursuant to section 77 of the *Police Act*. "No jurisdiction" means that during the admissibility assessment, this office had no jurisdiction as the complaint did not involve a municipal police officer.

Types of Misconduct Alleged

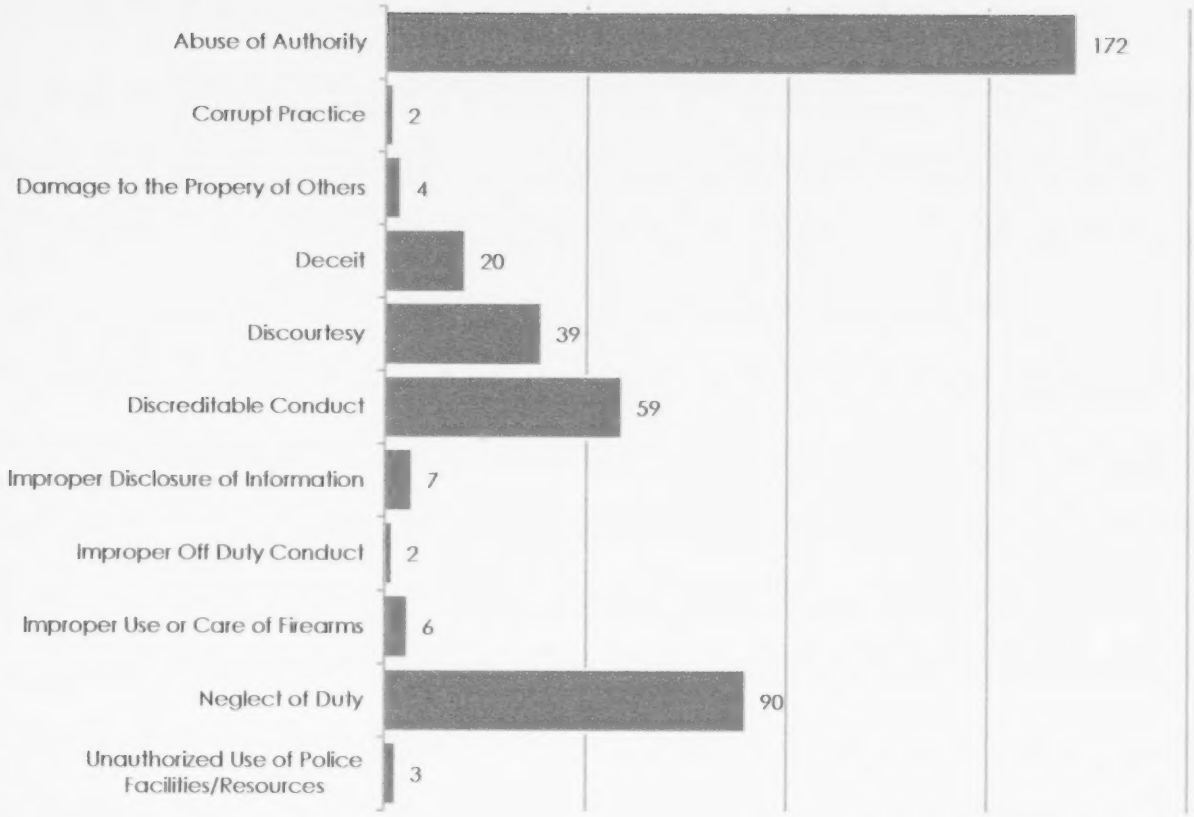
Once a complaint is deemed admissible or an investigation is initiated, allegations of misconduct are identified against individual officers. The *Police Act* identifies 13 public trust allegations:

1. *Abuse of Authority*
2. *Accessory to Misconduct*
3. *Corrupt Practice*
4. *Damage to Police Property*
5. *Damage to Property of Others*
6. *Deceit*
7. *Discourtesy*
8. *Discreditable Conduct*
9. *Improper Disclosure of Information*
10. *Improper Off Duty Conduct*
11. *Improper Use or Care of Firearms*
12. *Misuse of Intoxicants*
13. *Neglect of Duty*

From April 1, 2016, to March 31, 2017, the OPCC identified 404 potential public trust allegations and forwarded them to the respective police department for investigation. Please note that these are only allegations and do not reflect whether the allegations were substantiated.

The allegations of *Abuse of Authority* (e.g. arrest or detention without good and sufficient cause or unnecessary use of force) account for almost half (43%) of all allegations forwarded for investigation, followed by *Neglect of Duty* (22%) (e.g. inadequate investigation, failure to provide *Charter Rights*, or failure to comply with departmental policy) and *Discreditable Conduct* (15%) (e.g. conduct that discredits the reputation of the police department).

Types of Alleged Misconduct for 2016/2017



NOTE:

- These are allegations arising from admissible registered complaints and ordered investigations pursuant to Division 3 (Public Trust).
- A single registered complaint or ordered investigation may contain more than one allegation of misconduct.
- The subsequent investigation may determine there is more than one police officer associated to the identified misconduct.
- "*Unauthorized Use of Police Facilities/Resources*" is a subsection of "*Corrupt Practice*." The OPCC distinguishes this as a separate category of misconduct in order to better capture statistics pertaining to this conduct.

ALLEGATIONS CONCLUDED

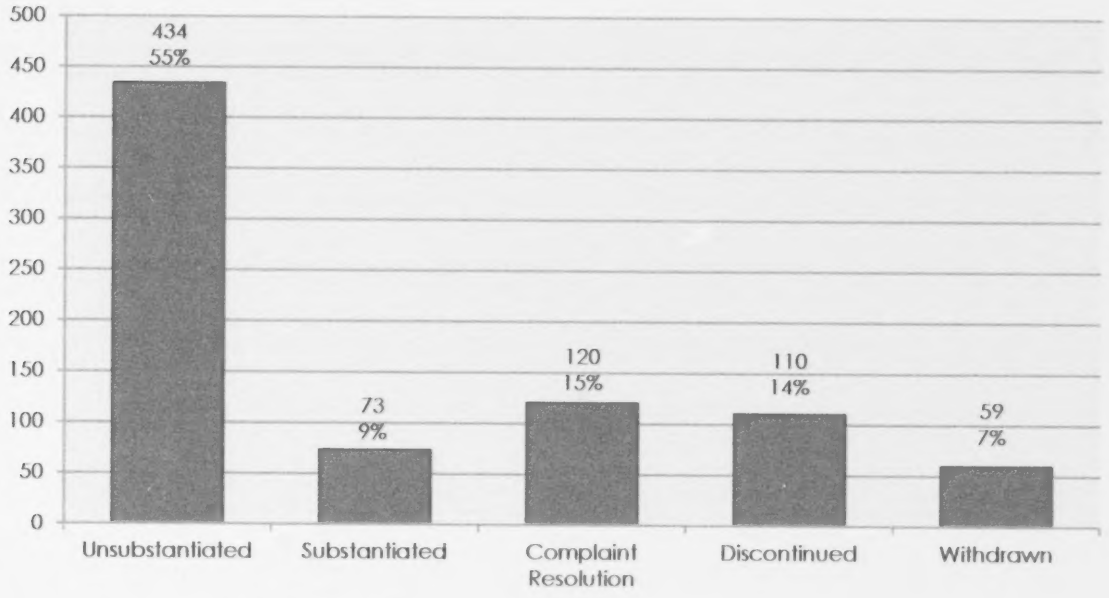
April 1, 2016, to March 31, 2017

The following figures refer to allegations, not complaint files, as in the previous section. A complaint file may contain many allegations of misconduct involving multiple police officers and, have a variety of outcomes. Therefore, straight comparisons between opened files and concluded allegations cannot be made. Allegations of misconduct against an officer may result in one or more of the following outcomes:

Withdrawn	A complainant may withdraw his or her complaint at any time in the process; however, the Commissioner may direct that the investigation continue or order an investigation.
Complaint Resolution	A complaint may be subject to a Complaint Resolution pursuant to Division 4 of the *Police Act*. Both parties must sign a Consent Letter outlining the agreement and both parties have 10 business days in which to change their minds. The OPCC reviews all Complaint Resolutions and if the Commissioner determines it is inappropriate or inadequate, the resolution is set aside and the investigation continues.
Mediated	A complaint may be resolved through mediation, facilitated by an independent professional mediator. If no agreement can be reached, the investigation continues. The Commissioner has the authority to direct a complainant to attend mediation, and similarly, the Chief Constable of a department can order the officer to attend.
Discontinued	The Commissioner may discontinue an investigation into allegations of misconduct if it is determined that further investigation is neither necessary nor reasonably practicable, or if it is found that the complaint is frivolous, vexatious or made knowing the allegations were false.
Substantiated	If, following an investigation, the Discipline Authority determines the allegation appears to be supported by the evidence, the Discipline Authority must then decide on appropriate disciplinary and/or corrective measures to impose. The officer may accept the proposed measures at a prehearing conference or the matter may proceed to a discipline proceeding. The Commissioner may arrange for a Public Hearing or Review on the Record by a retired judge if it is in the public interest. The officer also has an automatic right to a Public Hearing or Review on the Record if the proposed penalty is a reduction in rank or dismissal.
Not Substantiated	Following an investigation, the Discipline Authority may determine there is not sufficient evidence to support the allegation of misconduct. All complaints determined to be unsubstantiated are reviewed by the OPCC and, if it is determined that there is a reasonable basis to believe the Discipline Authority's decision is incorrect, the Commissioner may appoint a retired judge to conduct a review of the investigation and arrive at a decision.

Allegations Concluded in 2016/2017

Between April 1, 2016, and March 31, 2017, the OPCC concluded 796 allegations.



A total of 507 allegations (64% of all concluded allegations) were forwarded to a Discipline Authority for a decision to determine whether misconduct had been proven. The Discipline Authority bases his or her decision on the Final Investigation Report prepared by the department's professional standards investigator and the evidence and records referred to in the report. The finding of misconduct is based on a balance of probabilities which is similar to the standard used in civil proceedings. The remaining 36% of allegations were resolved by Complaint Resolution, discontinued or withdrawn. Of those complainants who withdrew their complaints, 36% reported that they were satisfied, 29% were frustrated with the complaint process, 19% lost interest in the complaint process, 14% reported they were pursuing other avenues and 2% did not provide a reason.

Year-By-Year Comparisons of Concluded Allegations (Past five years)

	Number of Allegations Concluded	Discontinued	Informally Resolved/ Mediated	Withdrawn	Substantiated	Unsubstantiated
2012/ 2013	704	64 9%	170 of 643 26%	88 13%	51 7%	331 47%
2013/ 2014	945	119 13%	211 of 813 26%	80 8%	70 7%	465 49%
2014/ 2015	572	56 10%	76 of 465 16%	86 15%	56 10%	298 52%
2015/ 2016	796	90 11%	130 of 686 19%	102 13%	57 7%	417 52%
2016/ 2017	796	110 14%	120 of 651 18%	59 7%	73 9%	434 55%

Allegations Forwarded for Discipline Authority Decision (Past five years)

	Number of Allegations Concluded	Number of Allegations Forwarded for DA Decision	Substantiated	Unsubstantiated
2012/ 2013	704	382 54%	51 13%	331 87%
2013/ 2014	945	535 57%	70 13%	465 87%
2014/ 2015	572	354 62%	56 16%	298 84%
2015/ 2016	796	474 60%	57 12%	417 88%
2016/ 2017	796	507 64%	73 14%	434 86%

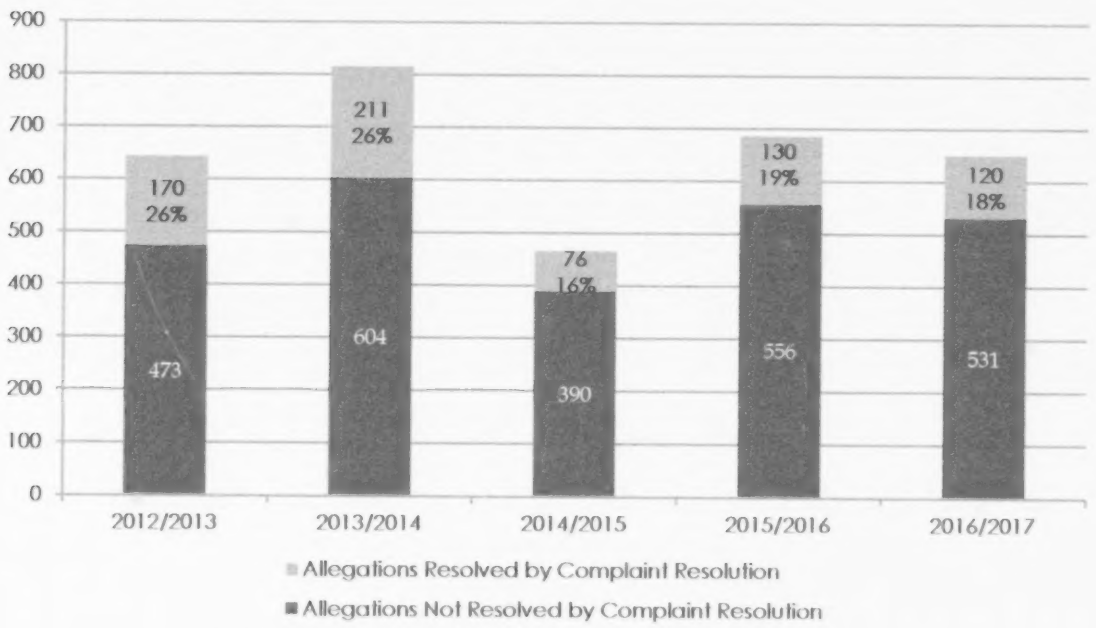
The number of allegations concluded this year were consistent with previous years. Of the allegations that were forwarded to a Discipline Authority for decision, 14% were substantiated and the member received disciplinary or corrective measures under the *Police Act*. These measures range from advice to future conduct, verbal or written reprimand, counselling/treatment, working under close supervision, suspension, reduction in rank, or dismissal.

Discipline Authorities must consider a number of aggravating and mitigating factors when coming to a decision on an appropriate disciplinary or corrective measure. Five allegations resulted in the dismissal of the officer.

ALTERNATIVE DISPUTE RESOLUTION

Complaint Resolution

Under the *Police Act*, only registered admissible complaints are eligible for Alternative Dispute Resolution. Between April 1, 2016, and March 31, 2017, the OPCC reviewed and approved Complaint Resolution agreements relating to 120 allegations of misconduct, or 18% of all allegations contained in registered complaints. When you examine the number of complaints vs. allegations resolved by Complaint Resolution, 30% of admissible complaints last year were successfully resolved.



Based on the current legislation, it is the police department which decides whether to attempt to resolve a complaint using Complaint Resolution. The Commissioner cannot direct police departments or complainants to use Alternative Dispute Resolution. The OPCC is working closely with police departments to encourage and promote the use of Alternative Dispute Resolution as a meaningful tool to resolve complaints. Mechanisms have been put in place to track the success rate of those complaints where Complaint Resolution is determined to be suitable and the OPCC is now tracking why some Complaint Resolutions do not succeed. Based on a review of the reasons why certain Complaint Resolutions failed, the OPCC implemented a number of internal changes in an effort to more effectively encourage the use of Complaint Resolution amongst complainants.

Mediation

Mediation is a more formal process for resolving disputes between a complainant and an officer with the assistance of a neutral professional mediator.

There were no mediations held between April 1, 2016, and March 31, 2017.

REPORTABLE INJURIES

The *Police Act* requires departments to report all incidents where an individual in the care or custody of the police suffers a "reportable injury" which is one requiring medical treatment. These "reportable injuries" are opened by our office as Monitor files until it is determined whether an investigation will be conducted.

Reportable Injuries by Year and Type (Past five years)

	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017
	297 Notifications/ 326 Uses of Force	336 Notifications/ 360 Uses of Force	313 Notifications/ 384 Uses of Force	409 Notifications/ 487 Uses of Force	426 Notifications/ 521 Uses of Force
Arwen/Bean Bag	11	15	23	21	13
Baton	6	6	4	6	5
Dog Bite	106	84	102	181	174
Empty Hand	59	62	108	104	103
Firearm	2	2	6	4	3
Motor Vehicle Accident	8	18	18	26	28
OC Spray (pepper spray)	3	3	5	4	4
Other[3]	63	68	28	28	42
Pre-Existing	17	15	21	20	48
Self-Inflicted	43	80	61	79	84
Taser	8	7	8	14	16
Weapon	-	-	-	-	1

[3] "Other" are incidents where a person is in medical distress with the cause being unknown.

Investigation Orders Following Review of Reportable Injuries

	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017
Mandatory Investigations	5	28	24	15	7
PCC Ordered Investigations	10	10	5	4	4
Department Request Investigations	4	2	1	1	1
Registered Complaints	10	9	7	11	9

There has been a minor increase in the number of reportable injury notifications reported to the OPCC. Of the 426 reportable injury notifications, seven met the definition of serious harm[4] under the *Police Act* and resulted in a mandatory external investigation, five resulted in misconduct investigations. Similar to last year, dog bite injuries from the use of police service dogs were the most frequent reportable injury reported to this office, accounting for 33% of all injuries. There were three reportable injuries involving a firearm, as compared to four in the previous year. Very few people who suffer a reportable injury file a registered complaint.

[4] *serious harm* means injury that may result in death, may cause serious disfigurement, or may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ.

APPOINTMENT OF A NEW DISCIPLINE AUTHORITY [s.117]

If, following an investigation, the Discipline Authority determines that the conduct of the officer did not constitute misconduct, and the Commissioner believes there is a reasonable basis to believe the decision is incorrect, the Commissioner may appoint a retired judge to review the matter.

Between April 1, 2016, and March 31, 2017, the Commissioner appointed a retired judge to act as a new Discipline Authority in *three* matters.

REVIEW ON THE RECORD [s.141]

Following a discipline proceeding, the Commissioner has the discretion to order a review of the proceeding where there is a reasonable basis to believe that the decision of the Discipline Authority is incorrect, or it is in the public interest to review the matter.

Between April 1, 2016, and March 31, 2017, the Commissioner appointed a retired judge to conduct a Review on the Record in relation to *four* matters.

PUBLIC HEARING [s.143]

Public Hearings remain an option for the Commissioner if he believes such a review of a *Police Act* matter is required in the public interest. Public Hearings are conducted by retired judges, are open to the public and evidence is presented under oath.

Between April 1, 2016, and March 31, 2017, the Commissioner ordered *one* Public Hearing.

All decisions from these three adjudicative avenues are available to the public through the OPCC website at www.opcc.bc.ca. As well, there is a schedule of current Public Hearings indicating the date and place of the hearings. All Public Hearings are open to the public to attend.

RESOURCES

1. Office of the Police Complaint Commissioner website www.opcc.bc.ca
2. OPCC brochures:
    i. *Let Us Help You Guide*
    https://www.opcc.bc.ca/publications/printable_brochures/Let_Us_Help_You.pdf
    ii. *General Information*
    https://www.opcc.bc.ca/publications/printable_brochures/general_information_brochure.pdf
    iii. *Alternative Dispute Resolution*
    https://www.opcc.bc.ca/publications/printable_brochures/adr_brochure.pdf
    iv. *Complaint Form*
    https://www.opcc.bc.ca/form/index.asp
3. *Police Act* of British Columbia http://www.bclaws.ca/civix/document/id/complete/statreg/96367_01
4. Independent Investigations Office of British Columbia www.iiobc.ca
5. Other Canadian oversight agencies https://www.opcc.bc.ca/outreach/oversight_agencies.html

APPENDIX: RECOMMENDATIONS TO POLICE BOARDS

Vancouver Police Department — Registered Complaint 2015-11435

Background

The complainant and two friends were cleared by security to enter BC Place for a concert. Once inside BC Place, the complainant and his friends were stopped by a Vancouver police officer who requested their identification. The complainant and his friends cooperated and their identification was queried on police databases. After conducting the query, the Vancouver police officer informed the complainant and one of his friends that they would have to leave the venue. The Vancouver police officer informed the complainant that the reason for his ejection was his history of drug use. The Vancouver police officer subsequently ejected the complainant from BC Place.

The OPCC determined the complaint to be admissible for an allegation of *Abuse of Authority* and forwarded it to the Vancouver Police Department's Professional Standards Section for investigation.

Based on the Final Investigation Report, the Discipline Authority determined that the allegation of *Abuse of Authority* was unsubstantiated. A Discipline Authority's decision is final and conclusive, unless the Police Complaint Commissioner considers there is a reasonable basis to believe that the decision is incorrect.

Based on a review of the available evidence, the OPCC was satisfied that the Discipline Authority appropriately determined that the allegation of *Abuse of Authority* against the respondent officer had not been substantiated. However, the OPCC arrived at this conclusion for different reasons.

According to the evidence reviewed, the officer was acting as an agent of BC Place pursuant to a private agreement. There was no evidence that the complainant had committed any offenses or was acting contrary to any of the terms of service identified by BC Place. The respondent officer stopped the complainant for the express purpose of checking his police history to see if he was the type of person that BC Place deemed not suitable for the event.

After reviewing relevant statute, including the *Trespass Act*, the OPCC could not identify any provisions authorizing private entities to retain the services of police officers for the purpose of having those officers run background checks on patrons to determine their suitability for patronage.

As there were a total of 31 police officers in attendance that night, it was this office's opinion that any responsibility for the ejection of the complainant should not fall at the feet of one officer who was operating in a similar capacity to other police officers at the event. Rather, it was determined that this issue was best addressed via a systemic approach that sought to revise the broader issue of police officers working as agents pursuant to private contracts.

Section 177(4)(c) Recommendations

In his decision, the Discipline Authority acknowledged that this incident revealed the need for the development of policy. Upon review by this office, it appeared that there was a significant lack of clarity regarding the roles and authorities for officers when fulfilling service contracts for private entities, as evidenced by this particular incident. This lack of clarity unnecessarily subjected police officers to jeopardy of *Police Act* investigations and potentially violated the rights of citizens.

Therefore, pursuant to section 177(4)(c) of the *Police Act*, the Police Complaint Commissioner recommended that the Vancouver Police Board examine and reconsider any policies or procedures that may have been a factor in the conduct that was the subject of this investigation including, but not limited to, the following:

1. The creation of policy that outlines and defines the roles and authorities of VPD members when working pursuant to service agreements with private entities. This policy should specifically identify:
    - the authority for members to demand government-issued identification or identifying information from patrons once those patrons have satisfied all entry requirements;
    - the authority members have to check patrons on police databases when acting on behalf of a private entity and no criminal or regulatory offense has occurred;
    - the application of the BC *Trespass Act* to situations in which patrons have paid to enter an event, have satisfied all entry requirements and are not in contravention of any posted/notified rules or restrictions; and
    - the lawful authority to eject a patron when that patron has paid to enter an event, has satisfied all entry requirements and is not in contravention of any posted/notified rules or restrictions.
2. Clear policy outlining the necessary content for formal written agreements between the VPD and private entities, such as BC Place and similar venues, in order to ensure that members clearly understand the scope of their roles and authorities when working at private functions in such venues.
3. Clear policy regarding the use of police databases to obtain information about patrons when acting on behalf of a private entity.
4. The creation and application of formal training for members regarding the scope of police authorities when working as agents pursuant to private service contracts, including the application of the *Trespass Act*, authorities to demand identification or identifying information from patrons and the appropriate use of police databases.

The Police Complaint Commissioner advised that the collection of identifying information by police is an ongoing concern. As such, the Police Complaint Commissioner was hopeful that the Vancouver Police Board would adopt a comprehensive policy with broad application to a variety of policing circumstances that strikes a reasonable balance between the rights of citizens and the goals of policing. The Police Complaint Commissioner was of the view that the only other viable alternative was to seek assistance from the legislature, as exemplified in Ontario, and currently under consideration in Alberta.

Police Board Response

At the time this report was generated this issue remained outstanding.

Vancouver Police Department — Ordered Investigation 2015-11354

Background

The OPCC received information that a member of the Vancouver Police Department may have been fraudulently claiming time by arranging pay for themselves while not actually working.

If information comes to the attention of the Police Complaint Commissioner concerning the conduct of a person who, at the time of the conduct, was a member of a municipal police department and that conduct would, if substantiated, constitute misconduct, the Police Complaint Commissioner may order an investigation into the conduct of the member or former member. In this case, the Police Complaint Commissioner deemed it to be in the public interest to order an investigation into the matter.

For the purpose of this investigation, the *Police Act* investigator and the OPCC determined that it would be appropriate to audit the respondent officer's work and payroll for an identified period of time to identify any potential patterns of behavior.

The Final Investigation Report identified 18 instances where there were discrepancies between payroll documents and the respondent officer's attendance at work. It became apparent through a review of the Final Investigation Report that there was a lack of documentation in regards to some of the days

that the respondent officer had taken off using their unofficial banked time, which made it difficult to discern precise details as to what sort of leave they were using when away from work.

Based on the Final Investigation Report, the Discipline Authority determined that the allegation of *Discreditable Conduct* was unsubstantiated. The Discipline Authority noted in his decision that "*the process of administering lieu days is, for a better lack of terms, loose. Because lieu time is not officially recognized there is no requirement or process for accurately documenting it.*" The Discipline Authority advised that lieu time was not officially recognized by the Vancouver Police Department but relied upon for the department to function within budget limitations. He wrote, "*This issue is one that has been discussed over generations of policing and despite the objection to lieu time, by both the Vancouver Police Union and the Vancouver Police Executive, it has always been deemed a necessary element of time management.*"

The OPCC reviewed the evidence contained in the Final Investigation Report and noted that the Duty Sheets provided to the OPCC were illegible, written in pencil, did not seem to accurately list who was working and who was away, appeared disorganized and did not seem to be the type of record keeping that would properly document the expenditure of public funds for highly paid members of a police department. The appropriate payroll role codes or banks (i.e. sick bank, overtime bank, annual leave bank, gratuity bank, reconciliation bank and cumulative time off bank) were not properly recorded or used. Several shifts of the respondent officer were unaccounted for which raised the possibility that other members' shifts were not properly documented.

The OPCC contacted similar sized police agencies outside of BC to determine how they operate with respect to a lieu system. One department advised that they did not have any kind of unofficial banked time or lieu system; all extra hours worked are documented and then compensated with pay or time off. Another advised that they do have a time balance system that records voluntary overtime that is pre-approved by a supervisor but there are strict limits on how much time can be accumulated and when it must be used. The President of the Vancouver Police Union stated that the union does not approve of members working extra hours for lieu time as it is outside of the Collective Agreement and members can be disadvantaged by this unaccountable system.

Section 177(4)(c) Recommendations

Having reviewed the available evidence, it was apparent to the OPCC that the lack of a clear, formalized policy with respect to how overtime was granted, tracked and remunerated by the VPD may have been a factor in the conduct that was the subject of this investigation.

This investigation also raised a concern regarding whether the use of lieu time by VPD members results in officers not using their vacation allotments which could lead to members being paid out for their unused vacation resulting in an unnecessary cost. Although the Discipline Authority believed that the lieu system was necessary for the functioning of the Vancouver Police Department, it was questionable as to whether there was some financial benefit to such a system and the lieu time system may arguably increase the costs of policing. The lieu time system appeared to be a widespread and unaccountable mechanism for granting time away from regular duty for work completed outside of assigned hours of duty.

The Police Complaint Commissioner was of the view that the Vancouver Police Department could benefit from the creation of a clear, formalized policy for granting and remunerating members for hours worked outside of their regular assigned duties that was accountable to the public, was fair to the members and consistent with the language in the Collective Agreement between the Vancouver Police Union, the Vancouver Police Officers Association and the Vancouver Police Board. The Police Complaint Commissioner was also of the view that the Vancouver Police Department may wish to consult with other large municipal police agencies in Canada to compare approaches used by those agencies.

Pursuant to section 177(4)(c) of the *Police Act*, the Police Complaint Commissioner recommended that the Vancouver Police Board examine and reconsider any policies or procedures relating to lieu time and overtime including, but not limited to:

1. The current VPD timekeeping system, particularly Duty Sheets (a.k.a. Time Sheets) and reconsider whether a more accurate and accountable system can be developed;
2. The current system for granting and tracking lieu time, including:
    - The cost of the lieu system to the VPD, in particular, whether or not the extent to which members compile sufficient lieu time that regular vacation is not used and paid out annually;
    - Whether overtime is required to call out members to replace members who are off duty using lieu time;
    - Whether a lieu time system was necessary for the effective functioning of the VPD and, if so, how it can be accurately tracked so that it is fair and accountable; and
3. Other considerations and options for promoting an accountable system for approving and remunerating overtime, including accurate record-keeping.

Police Board Response

The police board requested the Vancouver Police Department conduct an investigation into the Police Complaint Commissioner's recommendations and produce a report for the board's consideration.

The report stated, in part, the following:

- Lieu time is the granting of time-off to an employee who has earned that time as a result of working minor amounts of overtime, however, the employee chooses to be compensated in the form of time-off as opposed to submitting for paid overtime.
- Since the concept of lieu time is not a formalized practice, it is not part of any policy. The VPD has seven procedures governing overtime and, in fact, business intelligence capabilities to track overtime are well advanced and audits are done regularly. The issuing, recording, tracking, processing, monitoring, data-mining and auditing of overtime was not an issue.

The report concluded that the use of lieu time was infrequent and when it was used it was usually a result of managing relatively minor, day-to-day scheduling issues, including dealing with unique employee circumstances that require common sense flexibility. The VPD was currently examining further automating various scheduling systems, however, the VPD was confident that policing costs and operations were not adversely affected by the infrequent use of lieu time.

Following a review of the report the police board concluded that a change to policy was not required.

Vancouver Police Department — Ordered Investigation 2015-11158

Background

The Office of the Police Complaint Commissioner (OPCC) received information from the Vancouver Police Department (VPD) in relation to a police officer who, while off duty, attended a gun range to practice with a self-purchased, non-approved, concealed carry holster. The police officer loaded his police-issued pistol, performed a few draws and attempted to re-holster while wearing multiple layers of clothing. While in the act of re-holstering, the police officer unintentionally shot himself in the upper right leg. As a result, the police officer sustained a broken femur, with significant tissue damage to his leg, which caused him to be off work for several months.

The Police Complaint Commissioner issued an Order for Investigation into this conduct and identified the potential misconduct as *Improper Use or Care of Firearms*, pursuant to section 77(3)(k) of *the Police Act*, specifically, the discharge of a firearm while re-holstering resulting in self-injury.

The *Police Act* investigator determined that the Vancouver Police Department Policy with respect to issued equipment was silent on the issuance or use of plainclothes/concealed carry holsters for members assigned to plainclothes duty.

The investigator interviewed a VPD Firearms Training Supervisor who confirmed that the VPD had no policy respecting plainclothes holsters and that the VPD Policy relating to training and qualifying standards, did not specifically state that members working in plainclothes must use or qualify with a plainclothes/concealed carry holster.

The Discipline Authority determined that due to the lack of policy governing plainclothes training and equipment, the police officer did not violate VPD policy when attempting to practice with a non-issued and non-approved holster. The investigation also determined that the police officer had not taken the VPD training course on plainclothes/concealed carry holsters, as this course was not mandatory by policy.

The investigation also determined that the VPD Force Options Training Unit (FOTU) has a course available that teaches that any new equipment, including holsters, and any related techniques be practiced with an unloaded and safe firearm until the student can demonstrate a proper draw and re-holstering. The VPD's Firearms Training Unit developed a four hour training course respecting concealed carry holster training, which includes a 30 minute session dedicated to the proper carry and practice, and a minimum of 20 draws to be practiced with an unloaded and safe firearm prior to live fire drills.

The Police Complaint Commissioner agreed with the Discipline Authority that this incident substantially differed from other negligent discharge incidents, as the respondent officer did not intentionally pull the trigger of his firearm. However, the Respondent Officer's decision to commence practicing a new technique with unknown equipment and with a loaded firearm would not be considered a 'best practice' approach and was not consistent with safe and accepted firearms training principles.

The Police Complaint Commissioner noted that the Discipline Authority also addressed this issue by making the following administrative recommendation:

> *"It is apparent that administrative policy amendments could prevent this situation from occurring in the future. It is my recommendation that the VPD Planning, Research and Audit Section review and amend our policies and procedures regarding Section 5.5 Issue Equipment to include an amendment where members shall only deploy with issued and approved holsters."*

It was the Police Complaint Commissioner's view that the VPD's lack of policy may have been a contributing factor in this incident as the respondent officer had not been issued with a department approved plainclothes/concealed carry holster and did not have the benefit of attending an approved training course for plainclothes/concealed carry.

The Police Complaint Commissioner also noted that the BC Provincial Policing Standard - 1.1 was also silent on the issuance and use of plainclothes concealed carry holsters.

Section 177(4)(c) Recommendations

Due to the frequency with which many members of the Vancouver Police perform their duties in a plainclothes capacity, either full or part-time, it was the Police Complaint Commissioner's view that it was incumbent upon the employer to ensure that all members assigned to plainclothes duties are issued approved and tested equipment and are appropriately trained on their use.

Based on a review of this matter, the Police Complaint Commissioner determined that the Vancouver Police Department could benefit from the creation of clear and objective policy respecting the acquisition, testing, approval and issuance of plainclothes/concealed carry holsters, with the additional requirement that members working in a plainclothes capacity successfully attend and complete

mandatory training, including annual re-qualification with an department issued and approved plainclothes/concealed carry holster.

Pursuant to section 177(4)(c) of the *Police Act*, the Police Complaint Commissioner recommended that the Vancouver Police Board examine and reconsider any policies or procedures relating to the selection and acquisition of approved plainclothes/concealed carry holsters and further to review and implement procedures which make it mandatory for members to use their issued plainclothes holsters after successfully completing an approved training course on plainclothes/concealed carry holsters.

Police Board Response

The Police Board accepted the Commissioner's recommendations with regards to the acquisition and issue of plain clothes holsters, as well as the annual qualification and proficiency requirements which members using plain clothes holsters must meet.

Vancouver Police Department — Registered Complaint 2015-10981

Background

The Office of the Police Complaint Commissioner received a complaint from a legally blind citizen who reported that he was walking beside his friend along English Bay Beach and decided to have a cigarette. Immediately after lighting the cigarette, he heard a voice say, "You can't smoke here" and "Didn't you see the signs?" The citizen didn't initially know that it was a police officer who was speaking to him and replied that he could not see the signs. He immediately extinguished the cigarette on his shoe. The friend of this citizen told the police officer that his friend was legally blind and couldn't read the signs.

The officer did not believe that the male was legally blind and based his belief, in part, on false stereotypes of blind people. These stereotypes included that the male must not have been blind as he was seen to be "walking on an uneven dirt path without assistance" and he was not blind because he was not utilising any "white cane." The incident escalated as it was alleged that the male would not properly identify himself. This male was eventually punched, kicked and pepper sprayed by police to effect the arrest of Obstruct Police. The citizen was then handcuffed, had his legs "hobbled," was placed into a police wagon and driven to jail.

With respect to the citizen's identification and proof of his disability, the citizen offered to show the respondent officer his CNIB card. The officer indicated the following in his statement:

"I requested any form of identification from [the citizen]. [The citizen] stated he only had CNIB identification. I was unaware what CNIB stood for, but asked [the citizen] to produce it."

This incident demonstrated that interactions of this nature do occur and can result in serious consequences. In this case, the citizen received physical injuries, was pepper sprayed and held in custody for several hours as a result of a dispute over the complainant's identification and disability.

The Police Complaint Commissioner had significant concerns with the stereotypes associated to this matter. These stereotypes remain an ongoing concern. The demonstrated lack of understanding surrounding blindness and visual impairment during this incident was identified as an educational gap. This educational gap provided an opportunity for VPD to take a leadership role in this area. In the Police Complaint Commissioner's view, police officers need to be aware of the types of disabilities which people may have and that certain types of disabilities may not be readily apparent. As a result, police departments may be required to modify their training or informational bulletins as appropriate.

Recommendations

Having reviewed the available evidence with respect to this incident, it appeared that either the lack of policy or the lack of adequate training of the respondent police officers may have contributed to this complaint. Due to the frequency with which the members of the Vancouver police come in contact with individuals with physical disabilities, all members should be well trained and proficient in interacting with a diverse public, including those persons with physical disabilities like blindness.

The Police Complaint Commissioner was of the view that the Vancouver Police Department could benefit from clear and objective policy and training in the area of understanding and interacting with a diverse public, including persons with physical disabilities.

Pursuant to section 177(4)(c) of the *Police Act*, the Police Complaint Commissioner recommended that the Vancouver Police Board examine and reconsider any policies or procedures relating to the interaction between officers and persons with disabilities and to provide timely communication to all members with respect to this issue. Specifically:

1. Examine current VPD policy and procedures, including training, with respect to police interactions with persons with disabilities. Consideration should be given to the development of policies and/or procedures, including the development of training programs, which will improve police interactions with persons with disabilities.
2. Prepare and disseminate a bulletin, in a timely manner to all members, which contains sufficient information in relation to interacting with persons with disabilities with a goal to prevent similar incidents from occurring in the future.

Police Board Response

The police board requested the Vancouver Police Department conduct an investigation into the Police Complaint Commissioner's recommendations and produce a report for the board's consideration.

The report stated, in part, the following:

> *There is no concerning history of complaints that would suggest a broad directive or policy is needed nor is there any suggestion of systemic institutional bias, neglect of care, or previous concerns of officers communicating with disabled persons.*

The report concluded that the term 'legally blind' was used during this interaction and the VPD recognizes that a good practice would be to understand the meaning of this term. It is also important to understand that legal blindness does not necessarily mean that a person has no vision at all. The VPD acknowledged that there was value in providing additional information to front-line personnel which defines the term legal blindness, the role of the CNIB, and suggests methods to assist interaction with people suffering sight loss and educates officers about the identity card issued by the CNIB.

The police board reviewed the report and was satisfied with the actions taken by the Vancouver Police Department in response to the Police Complaint Commissioner's recommendations.

APPENDIX: RECOMMENDATION TO POLICE BOARDS

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